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RESTRICTIVE TRADE PRACTICES COMMISSION

# REPORT

Concerning an Alleged Combine in the Manufacture,  
Distribution and Sale of Wire Fencing in Canada

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DEPARTMENT OF JUSTICE  
OTTAWA

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EDMOND CLOUTIER, C.M.G., O.A., D.S.P.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1954.



RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

CONCERNING AN ALLEGED COMBINE IN THE  
MANUFACTURE, DISTRIBUTION AND SALE  
OF WIRE FENCING IN CANADA

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COMBINES INVESTIGATION ACT

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Ottawa  
1954



## RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.  
Chairman



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RESTRICTIVE TRADE PRACTICES COMMISSION

Room 451, Justice Building,  
Ottawa, November 5, 1954.

Honourable Stuart S. Garson, Q.C.,  
Minister of Justice,  
Ottawa, Ontario.

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission dealing with an alleged combine in the manufacture, distribution and sale of wire fencing and related products in Canada.

The matter was brought before the Commission by the submission of a statement of the evidence obtained in the inquiry by the Director of Investigation and Research under the Combines Investigation Act and has been dealt with in accordance with the provisions of Sections 18 and 19 of the Act.

Evidence and argument in regard to the Statement of Evidence were heard by the Commission at Ottawa between November 30 and December 7, 1953, and Messrs. F. C. Gascoigne and J. J. Quinlan appeared on behalf of the Director of Investigation and Research and Messrs. Hazen Hansard, Q.C., A. J. MacIntosh, W. E. G. Young and J. E. Mitchell, Q.C. appeared on behalf of the parties mentioned in the Statement of Evidence.

Yours faithfully,

(Sgd.) C. R. Smith  
Chairman



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## CHAPTER I

### INTRODUCTION

#### 1. Reference to the Commission

This inquiry was brought before the Restrictive Trade Practices Commission under Section 18 of the Combines Investigation Act, R.S.C. 1952, Chapter 314, which reads as follows:

"18. (1) At any stage of an inquiry,

- (a) the Director may, if he is of the opinion that the evidence obtained discloses a situation contrary to section 32 or 34 of this Act, or section 498 or 498A of the Criminal Code, and
- (b) the Director shall, if so required by the Minister, prepare a statement of the evidence obtained in the inquiry, which shall be submitted to the Commission and to each person against whom an allegation is made therein.

(2) Upon receipt of the statement referred to in subsection (1), the Commission shall fix a place, time and date at which argument in support of such statement may be submitted by or on behalf of the Director, and at which such persons against whom an allegation has been made in such statement shall be allowed full opportunity to be heard in person or by counsel.

(3) The Commission shall, in accordance with this Act, consider the statement submitted by the Director under subsection (1) together with such further or other evidence or material as the Commission considers advisable.

(4) No report shall be made by the Commission under section 19 or 22 against any person unless such person has been allowed full opportunity to be heard as provided in subsection (2)."

The Director of Investigation and Research under the Combines Investigation Act submitted to the Restrictive Trade Practices Commission, on August 25, 1953, a Statement of Evidence which contained the following general allegations:

(a) The evidence discloses that during the period from 1933 to the date of the hearings in April 1953 (sometimes referred to herein as "the designated period") the corporations named in section 5 of the Statement of Evidence [sometimes referred to herein as the "associated companies"] have been parties or privy to and have knowingly assisted in the formation and operation of a combination having relation to the manufacture, distribution and sale of wire fencing and related products, commodities which are the subject of trade or commerce. The said combination was by way of actual or tacit contracts, agreements or arrangements, described more fully in this statement, having or designed to have the effect of restraining or injuring trade or commerce throughout Canada wherever wire fencing and related products have been manufactured, distributed or sold. The said combination has operated and is likely to operate to the detriment or against the interest of the public by depriving the public of that competition to which the public is by law entitled.

The following more detailed allegations were also set out in the Statement:

(b) During the designated period the associated companies produced virtually all the woven wire fabrics made in Canada. Exports and imports of such fencing have been small, owing to the weight and bulky nature of the products and the incidence of customs duties. The associated companies have enjoyed a virtual monopoly of the production and sale of wire fencing and related products owing to their control over the production of woven wire fabrics and the fact that related products are sold in combination with these fabrics.

(c) The combination alleged in this Statement was in full operation in 1933, when the documentary evidence begins.

(d) During the period 1933 to 1936 inclusive, the associated companies, under the name "Manufacturers of Woven Wire Fence", met from time to time and corresponded from time to time. As a result of these meetings and correspondence, agreements were made under which minimum prices, terms and conditions of sale for farm fence applicable to prescribed geographical price zones were adopted for the several classes of buyers to whom fence was sold, lists of buyers falling into these several classes were established, common resale prices to be charged to the consuming public were prescribed for the use of dealers, common weights of fence were established to be used as the basis for selling price calculations, and a reduction was made in the number of styles of fence which manufacturers might produce.

- (e) To assure themselves that the agreed-upon prices, terms and conditions of sale for farm fence were adopted in the price lists of all the manufacturers, it was the practice during the said period [1933-6] for the associated companies to supply each other with copies of their dealers', resale and other price lists for the several geographical price zones.
- (f) To assure themselves that the prices agreed upon were actually being charged to buyers, and to maintain adherence to all the other agreements, the associated companies on occasion during the said period communicated with each other, freely expressing any complaints of suspected price-cutting or other deviations, requesting and forwarding details of prices actually charged to specific customers, communicating details of agreements reached to manufacturers who were not present at meetings, and expressing adherence to the agreements reached.
- (g) The associated companies also entered into agreements with respect to prices, terms and conditions of sale, including erection charges, for complete chain link fence, in such a manner and in such detail as to assure that, providing the said agreements were fully adhered to, persons purchasing such complete chain link fences would be confronted with identical tenders from all the associated companies quoting prices for this type of fence. There is some evidence that these agreements were not completely effective in 1933, but by April 1934 the associated companies had enlisted the assistance of S. J. Frame in connection with chain link quotations, after which the evidence is that the arrangements were working satisfactorily. The system adopted was for each associated company to send copies of its quotations to customers to S. J. Frame, who caused them to be checked against the prices, terms and conditions agreed upon. Deviations from these agreements were brought to the attention of the offending supplier by Mr. Frame. For his services Mr. Frame received a remuneration from each associated company based upon the total value of contracts it received.
- (h) At the meetings held on October 1, 1936, and December 11, 1936, it was decided to extend the work S. J. Frame was presently doing in connection with chain link fence and to appoint him permanent secretary of the association of fence manufacturers, costs of his services to be shared among the members, who were The Steel Company of Canada, Limited, Frost Steel and Wire Company, Limited, Dominion Steel and Coal Corporation, Limited, Sarnia Fence Company Limited, Lundy Fence Company Limited and New Brunswick Wire Fence Company, Limited. The association was divided into a chain link section and a farm fence section. Provision was made

for the secretary to attend four meetings per year, to prepare and forward minutes and price schedules to the members and generally to take care of the business of the association. He was empowered to examine the books of the companies in checking upon violations of the price agreements. There is no documentary evidence with respect to the exercise of this power, but the evidence of Mr. MacLean [one-time assistant to S. J. Frame], was that he could recall two instances when this was done. Mr. MacLean also said he could not recall the details.

The association as reorganized continued to operate throughout the period 1937 to 1947 inclusive, and became known as the Woven Wire Fence Association, having two divisions, the Farm Fence Division and the Chain Link Division. New Brunswick Wire Fence Company, Limited did not often participate in the meetings, but was nevertheless a member throughout the life of the association. It was usually represented at meetings by the representative of Lundy Fence Company Limited.

- (i) The agreements in effect during the life of the association amounted in general to an extension and refinement of the agreements described in paragraphs (d) to (h) inclusive with relation to the earlier period.
- (j) During the period 1937 to the inception of price controls in November 1941, the agreements among the association members to exclude competition from the farm fence business continued in effect. Meetings continued to be held for the purpose of altering prices, terms and conditions of sale applicable to all classes of customers, including the consuming public, changing the composition of lists of jobbers by way of additions or deletions thereto, and for other related purposes. Correspondence continued to take place among the members for the purpose of arriving at subsidiary agreements. On occasion such correspondence was carried on by the secretary's office. Most of the arrangements made in this manner were recorded in the "Farm Fence Schedule", issued by Mr. Frame. With respect to the chain link division, the meetings held in the period 1937 to 1941 inclusive decided upon prices, terms and conditions of sale for the products of this division. These were embodied in a "Chain Link Schedule" issued by the association office and circulated to the members. It was used by the members in the development of price quotations to customers.
- (k) The object of the agreement among the manufacturers upon a common price schedule for the chain link division was to remove competition in price and related matters with respect

to the sale of complete fences, whether chain link or the other types covered by the schedule. Such fences are composite products, involving not only fabric but gates, posts, reinforcements and erection charges. Accordingly the schedules were in some detail and the products were combined into several standard specifications which determined the composition of complete fences in terms of fabric, posts, rails and so forth. The schedule was designed to include enough information that, given identical quantities, each member could arrive at common total prices on fences to be sold to several different classes of customers. In order to ensure that the schedules were being used by the members in accordance with the agreement, the secretary's office was used as a clearing house for information about tenders and contracts for such fences. Copies of all quotations over \$200 in value were registered with him and these were checked against the schedules and any discrepancy brought to the attention of the members. On occasion members revised their quotations to prospective customers after the secretary's office pointed out such errors. The members also dealt directly with each other from time to time in respect of these tenders so as to secure uniformity and from time to time obtained information from the secretary's office as to the details of other members' quotations before tendering. Mr. Frame was paid for his services on the basis of a percentage of the completed contracts of each member. Complaints of price-cutting were discussed at meetings and also by correspondence between members or between the secretary and the member suspected of price-cutting.

- (1) The documentary evidence discloses that the Woven Wire Fence Association, as it had been organized during the years 1937 to 1947, came to an end in December 1947 owing to the decision of Dominion Steel and Coal Corporation, Limited to withdraw. S. J. Frame was no longer employed by the associated companies. The documents do not disclose the reason for this decision. It is clear from the evidence, however, that the withdrawal of Dominion Steel and Coal Corporation, Limited was not intended to bring an end to the combination, and in fact the combination continued thereafter.
- (m) During the period January 1948 to June 25, 1952, representatives of all the associated companies other than New Brunswick Wire Fence Company, Limited continued to meet with respect both to the farm fence and chain link divisions, the last meeting held for the furtherance of the agreement taking place in the fall of 1951. In spite of a conflict in the oral evidence as to whether or not New Brunswick Wire Fence Company, Limited was a party to the arrangements during this period, it nevertheless appears from the exhibits

implicating this firm that it was such a party.

At these meetings the associated companies continued to adopt common prices, terms and conditions of sale for products of the farm fence division. Such prices were established for the several price zones and the several classes of customers. From time to time one or more of the associated companies published in their price lists slightly higher prices than were agreed upon but this was not considered a contravention of the agreement which was designed to set minima below which prices could not fall. The addition of customers to the jobbers' lists continued to be the subject of discussion and agreement among the associated companies. Lists of uniform resale prices for these products continued to be the subject of agreement.

In the post-war years up to 1949 the price agreements which had been in effect with respect to complete chain link fence were largely in abeyance. Chain link fence was not being produced in Canada and the representatives of The Steel Company of Canada, Limited testified that although some complete chain link fences were being made from imported materials there was no uniformity of price among the associated companies. The Steel Company of Canada, Limited and Lundy Fence Company Limited, at least, priced such imported materials independently. The price agreements relating to the chain link division were therefore confined to square mesh fence\* and erection charges until the latter part of 1949, after which all products of this division again came under agreement and were discussed and agreed upon by the associated companies at their meetings.

In June, 1952, a meeting was held at Toronto, attended by all the associated companies except New Brunswick Wire Fence Company, at which the representatives of The Steel Company of Canada, Limited and Dominion Steel and Coal Corporation, Limited announced that henceforth their companies would attend no more meetings relating to fence prices.

(n) In connection with the entrance of a new firm into the chain link fence business in Montreal in 1948 and the subsequent establishment of lower prices in the Island of Montreal area by the fence manufacturers with offices in that district, the

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\* Square mesh fence, although used as a protective fence and dealt with under the Chain Link Division, is not a type of chain link fence but is more along the lines of farm fencing with square mesh fabric.

Statement alleges that the purpose of the specially low prices in the Island of Montreal area was to prevent Metals and Minerals Incorporated [the new firm] from becoming established in the chain link fence business.

Early in 1948 Loudee Equipment Corporation (now Loudee Steel Corporation) Montreal set up a subsidiary company, Metals and Minerals Incorporated, for the purpose of selling and erecting complete chain link fence imported from the United States. The representatives of the associated companies in Montreal discussed the matter and considered what concerted action they could take to deal with the new competition, and it was also discussed at times during the year at meetings of the associated companies.

During the period 1949 to 1951 inclusive Metals and Minerals Incorporated competed actively in the Montreal area with The Steel Company of Canada, Limited, Dominion Steel and Coal Corporation and Frost Steel and Wire Company, Limited. This competition led first to haphazard pricing by Dominion Steel and Coal Corporation, The Steel Company of Canada, Limited and Frost Steel and Wire Company, Limited and about mid-1950 to an agreement among them providing for specially low prices to apply only in the Island of Montreal area. During 1951 Metals and Minerals became progressively less significant in the Montreal market, and by autumn no longer sold or erected complete chain link fence. The special Island of Montreal prices used by The Steel Company of Canada, Limited, Frost Steel and Wire Company, Limited and Dominion Steel and Coal Corporation, Limited were then abandoned.

(o) It is alleged in the Statement that a price change with respect to farm fence took place subsequent to the meeting of June, 1952 and that in connection with this change The Steel Company of Canada, Limited made its new price lists available to Dominion Steel and Coal Corporation, Limited. It is further alleged that the action of The Steel Company of Canada, Limited in supplying its internal price lists to Dominion Steel and Coal Corporation, Limited, and the action of Dominion Steel and Coal Corporation, Limited in requesting them and adopting them in its price structure, amounts to a tacit contract, agreement or arrangement having or designed to have the effect of fixing common prices for wire fencing and related products contrary to section 32 of the Combines Investigation Act. In view of the fact that Canadian Steel Corporation, Limited is a subsidiary of Dominion Steel and Coal Corporation, Limited and was supplied by Dominion Steel and Coal Corporation, Limited with this information, and that Frost Steel and Wire Company,

Limited (and its subsidiary Page Fence and Wire Products Limited) also has access to the information through its parent company, The Steel Company of Canada, Limited, the intentions and effects of this exchange of information are almost identical with the intentions and effects of the more intimate system of collusion applicable to the period covered by this Statement prior to June, 1952. The willingness of The Steel Company of Canada, Limited to supply Dominion Steel and Coal Corporation with its internal price lists presupposes willingness to supply them to the remaining two competitors, although it is not in evidence whether the lists were in fact supplied to Lundy Fence Company Limited and New Brunswick Wire Fence Company, Limited, and in the case of the latter it appears unlikely that this happened. Even if Lundy Fence Company Limited and New Brunswick Wire Fence Company, Limited were not parties to the tacit arrangements alleged in this paragraph, the remaining companies substantially control the trade in wire fencing and related products.

(p) In conclusion, it is alleged in the Statement of Evidence that the activities described therein were to the detriment and against the interest of the public because they ignored the specific public interest in free competition which the courts have held to be protected by the Combines Investigation Act. The entire price structure of the industry has been frozen into patterns determined by agreement rather than by the play of competitive forces and the participants in the wholesale trade have been determined by agreement. Except since the passage of the 1951 amendment to the Combines Investigation Act, prices to be charged by retailers to the public were likewise determined by agreement. The termination of direct discussions and explicit agreements among the manufacturers in June, 1952 did not terminate the ill-effects of the former agreements and even in the absence of continuing tacit agreement these ill-effects would continue to exist for a long time because of the traditional patterns of pricing and distribution laid down over the long period that the agreements were in effect.

It is not possible to measure the effects of these activities upon price levels for fencing and related products, because there are no objective standards for comparison. All bases of comparison have been removed by the arrangements themselves, extending as they have over so many years. It is similarly not possible to show what differences there would be in the structure of the manufacturing industry and its distribution policies had the industry operated in a competitive way. It is in evidence that the number of manufacturers in existence at the beginning of the period was larger than at

the end, and those who disappeared were usually merged into the integrated steel companies. There is no evidence, however, that these past mergers arose from intent to monopolize. On the other hand, in the only instance when a new entrant attempted to establish itself in the chain link fence business during the whole period strong and concerted measures against it were taken by the associated companies affected by the new competitor, which eventually abandoned its venture into the field.

## 2. Parties Mentioned in the Statement of Evidence

In paragraph 5 of the Statement of Evidence it is alleged that the following six corporations "have been concerned in the said combination during part or all of the period designated":

(1) Canadian Steel Corporation, Limited (hereinafter referred to as CANADIAN STEEL) was incorporated under the laws of Canada on June 5, 1913. Up to and including August 31, 1937, the capital stock of the company was owned by United States Steel Corporation. On September 1, 1937, the capital stock was acquired by Dominion Steel and Coal Corporation, Limited. The company operates one plant at Ojibway, Ontario, and engages in its own name in the manufacture, distribution and sale of wire fencing and related products.

This company participated in the alleged combination in 1933 until its plant was closed\* and resumed its participation after it reopened in 1938 and continued it throughout the remainder of the designated period.

(2) Dominion Steel and Coal Corporation, Limited (hereinafter referred to as DOSCO) was incorporated by Special Act of the Legislature of Nova Scotia, being Chapter 141 of the Statutes of 1928. This company has engaged through subsidiaries in the manufacture of wire fencing and related products and in its own name in the distribution and sale of the said products during the designated period. It has participated in the alleged combination throughout the said period. The following companies are or were its subsidiaries in this respect:

Security Fence Company Limited was acquired as a wholly-owned subsidiary by DOSCO about April, 1930.

\* It was submitted on behalf of the company that the plant had been closed for some time prior to its acquisition.

Its charter was surrendered on November 16, 1950.

Canadian Tube & Steel Products, Limited was acquired in 1942-43, and it continues to exist as a corporate entity. It has a plant at Montreal, where wire fencing and related products are made.

Sarnia Fence Co. (1939) Ltd. This company was incorporated in 1939 after DOSCO had acquired Sarnia Fence Company Limited, a company which had participated in the combination prior to its acquisition by DOSCO. These companies owned a fence manufacturing plant in Sarnia, Ontario. The charter of the Sarnia Fence Co. (1939) Ltd. has been surrendered and there is no record of the factory ever having operated during the corporate existence of the company.

Although DOSCO is a holding company with manufacturing subsidiaries, it has held itself out to the public as a manufacturer as well as a distributor and vendor of wire fencing and related products. Its employees have concerned themselves with the manufacture, distribution and sale of wire fencing and related products and it has issued the relevant price lists under its own name. For some time its fencing business, or part of it, was carried on under the name of Security Fence Division of DOSCO. It has not employed the name of Canadian Tube & Steel Products, Limited, its Montreal manufacturing subsidiary, in connection with the manufacture, distribution and sale of wire fencing and related products.

(3) Frost Steel and Wire Company, Limited (hereinafter referred to as FROST) was incorporated under the laws of Canada on February 25, 1916. On October 31, 1937, it became a subsidiary of the Steel Company of Canada, Limited. It has participated in the alleged combination throughout the period covered by this statement. It manufactures wire fencing and related products at its plants in Hamilton, and engages in the distribution and sale thereof. The warehousing and sale of its products in the province of Quebec are carried on by its subsidiary Page Fence and Wire Products Limited, whose operations are integrated with those of the parent company. The Peerless Wire Fence Company, Limited, whose name appears in the documentary evidence, was a subsidiary of FROST until its charter was surrendered in 1938.

(4) Lundy Fence Company Limited (hereinafter referred to as LUNDY) was incorporated under the Ontario Companies Act on November 21, 1925. At this time it acquired a wholly-owned subsidiary, Lundy Steel Products Limited. The

latter company manufactures wire fencing and related products at its plant at Dunnville, Ontario, and sells all\* its output to Lundy Fence Company Limited, which distributes and sells it throughout Canada. Prior to 1925 the business, later to become Lundy Fence Company Limited, was carried on by Mr. A. R. Lundy as a partnership. LUNDY has participated in the alleged combination throughout the designated period.

(5) New Brunswick Wire Fence Company, Limited (hereinafter referred to as N. B. FENCE) was incorporated in 1898 under the laws of New Brunswick. It is engaged in the manufacture, distribution and sale of wire fencing and related products, having a plant at Moncton and selling principally in the Maritime Provinces. It has participated in the alleged combination since 1933 except for the period after June, 1952.

(6) The Steel Company of Canada, Limited (hereinafter referred to as STELCO) was incorporated under the laws of Canada on June 9, 1910. It is engaged in the manufacture, distribution and sale of wire fencing and related products, which it has manufactured throughout most of the period at Hamilton, Ontario, and Lachine, Quebec, and which it distributes and sells throughout Canada. It has participated in the alleged combination throughout the designated period. Although it is the parent company of FROST it has not merged the fencing business of FROST with its own but has caused this subsidiary to operate as a separate entity.

### 3. Hearings and Witnesses

Hearings for the taking of evidence in the inquiry were held, on application by the Director of Investigation and Research, before Mr. C. Rhodes Smith, Q.C., Chairman of the Commission, during April, 1953 at Toronto, Hamilton and Montreal, during which the following witnesses were examined:

J. C. Mills )	Combines Investigation Officers
J. D. Wentzell )	
E. H. Bickle	General Sales Manager, Canadian Steel Corporation, Limited
John Woods	Sales Manager, Fence Division, Dominion Steel and Coal Corporation, Limited
C. C. Morin	President and General Manager, Frost Steel and Wire Company, Limited

\* Evidence was given before the Commission that from 20 to 22% of its output is sold to outside firms by Lundy Steel Products Limited, although the executive offices of both companies are the same.

A. R. Lundy	President, Lundy Fence Company Limited
R. J. Lundy	Vice-President and Sales Manager, Lundy Fence Company Limited
William MacLean	Lundy Fence Company Limited
F. E. Keating	Secretary-Treasurer and Manager, New Brunswick Wire Fence Company, Limited
J. E. Morris	Sales Manager, Fence Division, The Steel Company of Canada, Limited
G. B. Millar	Assistant to J. E. Morris
J. W. E. Ducharme	Sales Manager, Eastern Division, Fence Section, The Steel Company of Canada, Limited

In accordance with Section 18(1) of the Combines Investigation Act, the Statement of Evidence was submitted to the Restrictive Trade Practices Commission and also to each of the persons against whom an allegation was made therein. The Commission, by an Order dated August 26, 1953, originally fixed Tuesday, October 13, 1953, at 10 o'clock in the forenoon, in a court room of the Exchequer Court of Canada, in the City of Ottawa, as the date, time and place at which argument in support of the Statement of Evidence could be submitted and at which persons against whom any allegation had been made in such Statement would be allowed full opportunity to be heard in person or by counsel, the whole in compliance with Section 18(2) of the Act. In giving notice thereof, the Commission further informed the parties that at such hearing they would have the opportunity of further examining any witness who had been called during the course of the inquiry or of having called any additional witnesses or of submitting additional documentary evidence. At the request of counsel for some of the interested parties, this date was subsequently set back to November 30, 1953. The hearing opened in a court room of the Exchequer Court of Canada in Ottawa on that date and concluded on December 7, 1953. The following appearances were registered:

F. C. Gascoigne, Esq., and J. J. Quinlan, Esq.,	For Director of Investigation and Research;
Hazen Hansard, Esq., Q.C.	For Dominion Steel and Coal Corporation, Limited and Canadian Steel Corporation, Limited;
A. J. MacIntosh, Esq.,	For Steel Company of Canada, Limited and Frost Steel and Wire Company, Limited;
W. E. G. Young, Esq.,	For Lundy Fence Company Limited
J. E. Mitchell, Esq., Q.C.	For New Brunswick Wire Fence Company, Limited.

In the course of the hearing certain documentary and other exhibits were received and the following witnesses were examined:

D. J. DeMille, Secretary and Assistant Treasurer, Lundy Fence Company Limited  
L. T. Craig, Vice-President, Sales, The Steel Company of Canada, Limited  
C. P. Short, General Sales Manager, Wire Products and Screw Products, The Steel Company of Canada, Limited  
J. G. Collinson, Assistant Secretary, The Steel Company of Canada, Limited  
V. O. Phillips, The Steel Company of Canada, Limited  
Lionel E. Forsyth, Q.C., President, Dominion Steel and Coal Corporation, Limited  
G. C. Broadbent, Secretary-Treasurer, Dominion Steel and Coal Corporation, Limited  
T. H. McEvoy, Vice-President, Steel Sales, Dominion Steel and Coal Corporation, Limited  
M. Deitcher, Vice-President, Loudee Steel Corporation.

4. Position Taken with Respect to the Allegations by the Respective Parties

Some time prior to the opening of the hearing for argument, the parties named in the Statement of Evidence were informed by the Commission that at the commencement of the hearing each party represented would be called upon to state precisely the position taken with respect to the Statement of Evidence. That is to say, whether issue would be taken on the facts submitted in the said Statement and, if so, on what facts and whether issue would be taken on the conclusions submitted in the form of allegations of misconduct by the Director and, if so, on what allegation or allegations, and what propositions or conclusions would be submitted in reply thereto. The Commission indicated that it would find it of great service if written briefs outlining the position taken could be put in its hands before the commencement of the hearing and counsel for the respective parties assisted the Commission by so doing. The main points on which issue was taken in the briefs presented at the opening of the hearing may be outlined substantially as follows for the respective parties:

- (1) On the part of New Brunswick Wire Fence Company, Limited it was contended that the evidence did not disclose that it was a party to any combination after December, 1947.
- (2) As regards other parties named in the Statement of Evidence it was contended that the evidence did not disclose the existence of any combination relating to wire fencing and related products subsequent to June 25, 1952 and it was denied that any agree-

ment or arrangement among competitors has existed since that date.

- (3) It was contended on behalf of all those named in the Statement of Evidence that any combination to which they may have been parties did not operate to the detriment or against the interest of the public and was not likely to do so.
- (4) It was not admitted that any combination to which the corporations represented may have been parties related to products other than steel. It was contended on behalf of Lundy Fence Company Limited that aluminum chain link fencing now constitutes an important part of its production of such fencing.
- (5) It was generally admitted that the fence manufacturers represented at the hearing have made almost all of the wire fencing and related products sold in Canada, but it was contended that this situation prevailed because no other manufacturer chose to enter the business.
- (6) It was not admitted that exports and imports of woven wire fabrics have been small because of their weight and bulky nature and the incidence of customs duties. It was represented by some parties that types of fence used in Canada are not made in the United States, and by others, that competitive imports have always been a factor in the business.
- (7) It was contended on behalf of the parties manufacturing steel wire that imports of wire were, from time to time, substantial in volume, particularly in relation to the requirements of fence manufacturers who purchased wire. It was further argued by one party that there was nothing to show that imports of wire in greater volume would not have been made if Canadian wire manufacturers had not made every effort to give their competitors a fair share of available domestic supplies.
- (8) All parties contended that governmental controls, formal or informal in character, applied to prices and supply of steel during all or practically all the war and post-war periods and that arrangements among fence manufacturers in these periods were so related to control measures or to co-operation with the government that they should be distinguished from arrangements in existence prior to the outbreak of war in 1939.
- (9) All parties denied that woven wire fencing is subject to a highly seasonal sales pattern, although it was admitted that sales varied during the year and tended to be larger in the first six months than in the last six months of the year.

- (10) It was not admitted by any party that lists of buyers were established by agreement. The Steel Company of Canada, Limited and Frost Steel and Wire Company, Limited claimed that the arrangement was that any manufacturer who wished to add a person to a list was obliged to notify the others so that they would know the terms upon which such persons were being sold.
- (11) It was not admitted that common resale prices for consumers "were prescribed" in the sense that the dealers were forced to adopt such prices.
- (12) With respect to the period prior to the war it was contended either that there was no substantial reduction in the numbers or styles of fence manufactured or that any reductions were dictated by market conditions.
- (13) It was contended on behalf of Lundy Fence Company Limited and New Brunswick Wire Fence Company, Limited that there was no evidence indicating agreement, in the period prior to the war, to establish minimum prices.
- (14) It was not admitted that the practice of exchanging price lists was followed for the purpose of securing assurance that agreed-upon prices, terms and conditions of sale for farm fence were adopted in the price lists of the respective manufacturers.
- (15) It was contended on behalf of Dominion Steel and Coal Corporation, Limited and its subsidiaries that the arrangements made in respect of chain link fencing in the pre-war period were necessary to eliminate a serious and uneconomic price war, unfairly disadvantageous to smaller manufacturers, and that the attempt to secure uniformity in erection charges was an economy measure designed to eliminate uneconomic duplication of effort and which had the tendency to reduce the over-all cost to the consumer. It was admitted that uniform prices for like products resulted, but it was contended that there was no evidence to show that such prices were not entirely fair and reasonable.
- (16) All parties contended that with respect to whatever arrangements may have existed among fence manufacturers the evidence did not disclose that there was agreement to exclude competition from the farm fence business or, on the part of The Steel Company of Canada, Limited and Frost Steel and Wire Company, Limited that there was agreement to exclude all competition.
- (17) It was contended on behalf of those manufacturers engaged in

the production of chain link fencing that the evidence did not show that under the arrangements pertaining to chain link fence information as to any divergencies from the agreed prices shown in copies of quotations registered with the secretary by one member became available to others.

(18) The allegations in the Statement of Evidence with respect to the purpose of agreeing on specially low prices in the Island of Montreal area were denied and it was contended that the fence manufacturers doing business in this area did nothing more than endeavour to meet the competition of Metals and Minerals Incorporated.

## CHAPTER II

### THE WIRE FENCING INDUSTRY

The general outline of the organization of the wire fencing industry in Canada is contained in the description of the parties given in the Statement of Evidence to which reference has already been made, and to which exception was not taken apart from the few points to which attention has been drawn. In the case of STELCO and DOSCO, the production of wire fencing constitutes only one of the many fields of steel production in which they are engaged.

Wire fencing is made by weaving wire on fence-making looms. The wire used is chiefly galvanized steel wire, although in some cases the fabric is galvanized after being woven and, since the war, aluminum wire has been used in the manufacture of some types of heavy chain link fence.

DOSCO and STELCO engage in the production of wire fencing through all stages from the processing of basic materials into primary and secondary iron and steel forms as far as wire rods, then the drawing of wire from wire rods and galvanizing the wire and, finally, the weaving of fencing from wire. STELCO has wire drawing and fence plants at Montreal and Hamilton and, at the latter city, its subsidiary, FROST, also produces wire from wire rods, galvanizes wire and weaves fencing. DOSCO's subsidiaries, CANADIAN STEEL and Canadian Tube & Steel Products, Limited have wire drawing facilities and fence plants at Ojibway and Montreal respectively, although, according to the evidence of T. H. McEvoy, wire was shipped from Sydney to Montreal until 1953, as previously there were no wire producing facilities at the plant of Canadian Tube & Steel Products, Limited.

LUNDY and N. B. FENCE buy wire and weave fencing therefrom. As has already been described, the manufacturing operations in the case of LUNDY, are carried on through its subsidiary, Lundy Steel Products Limited, at the factory in Dunnville, Ontario. LUNDY and N. B. FENCE are thus dependent upon outside sources for their supplies of wire. During the period with which the inquiry has been concerned LUNDY and N. B. FENCE appear to have secured the bulk of their requirements of wire from DOSCO and STELCO. Since 1938, purchases from the latter competitor were reported in appreciable quantities only for the period after 1949. Steel wire for the manufacture of fencing has been duty-free in all gauges since 1947. Previously, 9, 12 and 13 gauge steel wire for fencing had been duty-free for many years under the British Preferential Tariff and, from 1932, subject to duty of 10 per cent under other tariffs. Customs duties on wire and wire

fencing generally are discussed in more detail below. Imports of such wire, as shown by the table in the appendix, have fluctuated considerably in the period since 1946 and have probably constituted, in most years, less than 2 per cent of the total quantity of steel wire used in the manufacture of fencing, although, of course, forming a larger proportion of the supplies of the manufacturer making the importations. Evidence was given on behalf of LUNDY to the effect that this manufacturer imports a special class of wire, when it is available, from the Bethlehem Steel Corporation in the United States for use in the manufacture of chain link fabric. In the post-war period LUNDY developed the use of aluminum wire in the manufacture of heavy chain link fencing. In times of steel shortage since World War II LUNDY has relied heavily on aluminum wire to maintain production of this class of fencing and under easier conditions of supply produces about equal quantities of aluminum and steel chain link fencing.

Production of steel wire fencing in Canada is classified by the Dominion Bureau of Statistics under three headings:

Woven wire farm fencing  
Woven wire lawn fencing  
Woven wire chain link fabric (including tonnage used  
in industrial fencing)

Statistics for each classification and for fence gates for the years 1938 to 1951 inclusive were included in the appendix to the Statement of Evidence and are reproduced in the appendix to this report, together with figures for 1952 and 1953 where these are available. The proportionate positions held by the different classes of fencing may be illustrated by the following figures for 1938 and 1952 from the reports of the Dominion Bureau of Statistics:

	1938			
	Quantity Sold	Income from Sales		
	tons	%	\$	%
Farm Fence	10,909	82.9	805,528	70.6
Lawn Fence	516	3.9	83,627	7.3
Chain Link Fabric	1,746	13.2	251,483	22.1
	13,171	100.0	1,140,638	100.0

	1952			
	Quantity Sold	Income from Sales		
	tons	%	\$	%
Farm Fence	15,917	74.9	3,025,638	65.8
Lawn Fence	1,307	6.1	374,684	8.1
Chain Link Fabric	4,008	19.0	1,196,831	26.1
	21,232	100.0	4,597,153	100.0

The statistical classification for woven wire fencing is based upon the type of construction rather than the purposes which the fence may serve. Light weight chain link fabric may be used for fencing residential properties and for fencing runs on fur farms.

In the inquiry two divisions of the industry were recognized. These were described as the Farm Fence Division and the Chain Link Division. In the main, the distinction appears to rest on the distributive channels employed in the marketing of fencing. The Farm Fence Division embraced principally those products which were distributed through dealers, both wholesale and retail, while the Chain Link Division embraced mainly heavy chain link fence, which fence manufacturers sold directly to users or contractors in the form of complete fence or installed fencing. Chain link fence is the type of protective fence usually found around industrial and other properties, including school and other public properties where protection is required. Square mesh fence, which came into wider use during the wartime period, was included in the Chain Link Division.

The Farm Fence Division was thus taken to include lawn fence and some classes of chain link fabric which are sold through dealers. The Statement of Evidence describes the products in the two divisions as follows:

"Farm fence and related products include heavy and medium styles of farm fence, hog fence, poultry fence, farm gates, railway fence and gates, some fence tools, chain link fabric of lighter weights, lawn fence and border, lawn gates and steel line, end, gate and corner posts.

. . .

Complete chain link fence and related products are complete fences, including intermediate and terminal posts of steel pipe and other accessories, made from either chain link or square mesh fabric. Square mesh fences are sometimes referred to as watchman fences."

During the argument, it was represented on behalf of one of the parties that, although square mesh fence is a protective fence, it is not referred to in the trade as a type of chain link fence. Nevertheless, in this inquiry, square mesh fence was always treated as coming within the Chain Link Division of the industry.

The trade in fence products is described as follows in the Statement of Evidence:

"Most lines of farm fence and related products are manufactured by each of the associated companies or their subsidiaries, although some individual styles are purchased by the companies

from each other. LUNDY and N. B. FENCE purchase their fence posts, some at least, from Burlington Steel Company Limited. All these products, manufactured or purchased, are distributed to dealers, jobbers and mail order houses for resale to the public. In Ontario, Quebec and the Maritimes the dealer trade is the most important outlet, but in the western provinces the jobber trade predominates. Dealers are retail hardware merchants, flour and feed stores, implement stores and similar retail establishments. Jobbers are wholesale hardware merchants. Mail order houses have been The Robert Simpson Company Limited (now Simpsons-Sears Limited), the T. Eaton Company Limited, and Dupuis Frères Limitée. Railway fence and some other farm fence is sold to the railway companies direct.

Chain link fence and related products are made by each of the associated companies or their subsidiaries, except for purchased pipe used as posts and rails, and except that N. B. FENCE does not make fabric for complete chain link fences, but sells and erects such fences which it purchases from LUNDY and DOSCO. These products are sold direct to users, including public bodies of all kinds, either as complete fence erected or as complete fence not erected. It is also sold to some customers of the associated companies who perform erection services. In such cases the complete fence is usually sold outright to these customers at a discount from the retail list."

In view of the corporate relationships among some of the fence manufacturers it is difficult to attempt any analysis of the relative importance of the different companies producing fence without revealing figures for individual companies, which would be undesirable in the circumstances. In 1934, The Tariff Board, in reporting on a reference dealing with wire for fencing gave some information as to the organization of the woven wire fencing industry at that period. At that time STELCO was operating its plants at Montreal and Hamilton and DOSCO was producing wire at Sydney, which was woven into fencing at Montreal by its subsidiary, Security Fence Company, Limited. FROST was producing wire and fencing at Hamilton. As has already been indicated, FROST did not become a subsidiary of STELCO until 1937. The Sarnia Fence Co. Limited with its plant at Sarnia, was manufacturing fence as an independent company as were LUNDY and N. B. FENCE. The Tariff Board divided the six manufacturers into two groups - three wire-producing companies and the three companies making fence from purchased wire. The relative production of the two groups for the period 1928 to 1933 was shown as follows:

Relative Proportions of Total Tonnage of Fencing Made by  
Three Wire-Producing Companies and Others

<u>Year</u>	<u>Three Wire- Producing Companies</u>	<u>Others</u>
1928	75.7	24.3
1929	79.2	20.8
1930	75.7	24.3
1931	73.0	27.0
1932	73.0	27.0
1933	69.8	30.2

In connection with data for the production of wire fencing the report of the Tariff Board stated:

"In some of the years under discussion fencing was produced by more than the six companies mentioned. This production, however, does not alter the picture and may be disregarded."

It may be remarked that the volume of production of fencing declined greatly between 1929 and 1933, from 29,076 tons in 1929 to 6,759 tons in 1933. Although production was approaching one-half of the former figure in the immediate pre-war years it was not until 1944 that total production of fencing again exceeded 20,000 tons.

From confidential information given to the Commission by the respective companies, and taking account of the fact that the manufacture of fencing ceased at Sarnia and has been carried on by CANADIAN STEEL at Ojibway, it would appear that the volume of production of the two independent manufacturers in relation to the total tonnage of steel wire fencing was about the same in the immediate post-war period as in the earlier period. In other words, STELCO and DOSCO and their subsidiary companies produce the far greater part of the total tonnage of fencing.

There was considerable evidence and argument presented to the Commission directed toward an observation in the Statement of Evidence that fence "is subject to a highly seasonal sales pattern." Evidence was given that while sales varied from month to month and tended to be greater in the first half of the year than in the second, an examination of the sales records did not reveal variations which could be described as a pattern. No detailed figures were submitted in evidence and it was obvious that witnesses were referring to total sales rather than to the sales of individual products.

The Dominion Bureau of Statistics has issued for a number of years monthly tonnage figures showing the production and shipments of woven wire fencing. The figures for shipments in 1951 are shown below:

Tonnage Shipments of Wire Fencing, 1951

<u>Month</u>	<u>Farm Fencing</u>	<u>Lawn Fencing</u>	<u>Chain Link Fabric</u>
January	2,016	121	169
February	1,907	158	235
March	2,171	142	249
April	2,075	246	312
May	2,091	248	334
June	1,178	143	333
July	1,313	70	393
August	944	28	223
September	1,147	16	293
October	943	18	303
November	815	76	271
December	385	2	195

The figures for other recent years show much the same variations during periods of the year. It is apparent that shipments of farm fencing have a period of relatively high shipments in the first half of the year and a period of relatively low shipments toward the end of the year. A somewhat similar pattern is shown for lawn fence, although the relatively small tonnages make it less apparent. In the case of chain link fabric shipments seem less definitely related to the period of the year.

Customs Duties

Until 1947, the Canadian Customs Tariff distinguished between steel wire for fencing of 9, 12 and 13 gauges and all other gauges. By Order-in-Council, effective February 1, 1947 steel wire of all gauges when imported by manufacturers of barbed wire fencing or of wire fencing was made duty-free under all Tariffs. Previously wire for such purposes of 9, 12 or 13 gauge was duty-free under the British Preferential Tariff and subject to duty of 10 per cent under other Tariffs. Similar galvanized wire of other gauges was subject to the following rates of duty, 10 per cent, British Preferential Tariff, 20 per cent, Most-Favoured-Nation Tariff and 20 per cent, General Tariff.

In the case of woven steel wire fencing the distinction has been between fencing woven from wire of gauges 9 to 14 (corresponding to diameters of .144 to .080 inches) and fencing woven from other gauges. The rates of duty applicable to the former since 1930 under Tariff Item 402 have been Free, 12-1/2 per cent and 15 per cent. The rates of duty applicable to the latter in recent years have been as follows under Tariff Item 402a:

	<u>1938</u>	<u>1948</u>	<u>1951</u>
British Preferential	20	17-1/2	12-1/2
Most-Favoured-Nation	35	25	20
General	35	35	35

Although the report of the Tariff Board in 1934 stated that wire fence if woven of wire from 9 to 14 gauge was dutiable under the lower scale of duties applying under Tariff Item 402, some question appears to have arisen since as to the inclusion of fence made of galvanized wire of the designated sizes under this tariff item. Farm fencing made from galvanized wire is, of course, the common type of fencing. The wording of Tariff Item 402 was revised in the Budget Resolutions of April, 1954 by the addition of the words "coated or not" in the first part of the item so that it now reads as follows:

"402 Woven or welded wire fencing, of iron or steel,  
coated or not, from wire not more than .144 inch  
and not less than .080 inch in diameter, with  
tolerance not to exceed .004 inch; wire fencing,  
of iron or steel, coated or not, n.o.p."



## CHAPTER III

### PRICE ARRANGEMENTS AMONG WIRE FENCE MANUFACTURERS

#### 1. Joint Arrangements Preceding Appointment of Association Secretary

The documentary evidence in this inquiry begins in 1933 and shows that at that time the representatives of the six manufacturers of woven wire fencing held joint meetings and communicated with each other in other ways to reach agreement on common prices, terms and conditions of sale in the marketing of fencing products in various territories whose boundaries were established on a common basis. The joint arrangements appear to have been effected without formal organization of an association, but at the time the documentary evidence begins, A. L. Page, then president and general manager of FROST, took an active part in sending out notices of meetings and transmitting copies of minutes and other documents to the interested parties.

The specific matters upon which the associated fence companies attempted to reach agreement and in large measure succeeded, were uniform selling prices, common styles of fencing, uniform basis for tenders, common terms and conditions of sale and common installation charges for the erection of fencing. The exchange of price lists appears to have been considered as a means to assist in the maintenance of uniform prices. The working out of these particular aspects in the early part of the period covered by the inquiry will now be reviewed.

Uniform Prices. The establishment of uniform selling prices remained the fundamental objective of the joint arrangements and in large measure, agreements on other matters proceeded from or were complementary to the working out of this basic objective.

Common Styles. The inclusion of common styles of fencing in the respective manufacturers' price lists appears to have been sought as a means of reducing the number of lines of fencing to be kept in stock or produced and also to render less likely attempts to compete in terms of quality. These aspects may be illustrated by the following references to the documentary evidence.

A STELCO memorandum dated March 21, 1933 dealt

with reports of the introduction of a new type of fence by FROST:

"The Frost Steel & Wire Company are writing all of their Dealers that they are discontinuing their line of 9 3/4 gauge Fence and are substituting for it at the same price, a 9 1/4 gauge Fence. Some of our Representatives have written that Dealers who have seen samples of this cannot tell the difference between the new Fence and No. 9. They are making a very strong point on this and are going after our accounts and everyone elses with their Peerless Fence.

I thought you might like to know this and that it might be discussed at the Fence Meeting.

I have not discussed the matter with them, but if they put out a heavier Fence than ours, they should charge a higher price, or we should let them know that we may have to substitute Full No. 9 in competition with their new Fence."

(Exhibit 5144)

Mr. A. L. Page, FROST, wrote in a letter of November 28, 1933 to Mr. A. C. Chapman of N. B. FENCE, as follows:

"Enclosed please find copy of Minutes of last Thursday's meeting. -

When discussing the work of the Standardization Committee your September 11th letter requesting that style 640 in Medium Weight be restored was presented, but it was the unanimous opinion of those present that there should be no styles added to those which had been adopted, otherwise all companies would soon find themselves carrying about as many styles as formerly. Other companies asked for some Specials, ourselves included, but thought it advisable to withdraw our requests, and the standard list now covers complete range of all to be manufactured or offered for sale.

We believe our Minutes provide you with a complete report, except that you are to hear later from the Montreal makers if Quebec and Maritime schedules are adopted."

(Exhibit 9727)

A reply which appears to have been prepared by Mr. Chapman reads as follows:

"We thank you for your letter of the 28th enclosing minutes of your last meeting. I note your remarks re the 640 medium weight fence. This has been a regular seller with us for many years, but we are perfectly willing to

discontinue it and make an effort to get our people to take the 740."

(Exhibit 9728)

Exchange of Price Lists. A considerable part of the documentary evidence consists of correspondence among the fence companies in relation to the exchange of price lists. It appears that the development of the practice of exchanging price lists was regarded as related to the joint arrangements among the fence companies with respect to prices. Correspondence in January, 1936 between J. Woods, then manager, The Sarnia Fence Co. Ltd., and Stuart I. Kell, then assistant sales manager, STELCO, Montreal, indicates the relationship. On January 21, 1936, J. Woods wrote to Stuart Kell and apparently sent the same letter to officials in other offices of fence companies in Ontario and Quebec. His letter was as follows:

"Enclosed find two copies of our new price list which we hope you will find in order. I think we should have a schedule on file showing prices of #9 gauge to the dealer in Quebec, Maritime and New Ontario, and it would seem to me proper for those who are making dealer lists for territory mentioned to also make a schedule and submit it to all manufacturers covering the price on #9 gauge. I make this suggestion because of an error we made last year in quoting the Government on #9 for delivery in Northern Ontario.

I think it would be well also if our Secretary would send us out a sheet bringing up to date all our quotations to the railway, Governments, etc. This should bear the date of 1936 and would prevent mistakes which might occur by going back to old lists."

(Exhibit 3251)

Mr. Kell wrote the following reply on January 23, 1936:

"Thank you indeed for your note of the 21st. attaching two copies of your price list.

I will have the Department check this up and, if there is anything that is contrary to our understanding, will communicate with you promptly.

With regard to price lists on #9 gauge in Quebec, Maritimes and New Ontario, we do not put out such a list as we do not offer #9 gauge in Quebec. I am not certain at the moment whether any other Maker offers #9 gauge in Quebec, but I will ascertain and, if there is no list in existence, will arrange to set up a list and circularize it. I think your idea is an excellent one.

I also agree that the Secretary should send out a sheet bringing up-to-date all our quotations on Railroad, Government etc. I hope this will be done in response to your letter. If it is not I will arrange to have our Department follow it up."

(Exhibit 3250)

Uniform Tenders. Close attention appears to have been paid to any differences in quotations or conditions of sale which might affect competitive selling. A difference among tenders submitted by several companies could be the occasion for checking the basis on which quotations had been made. On February 23, 1935, A. L. Page, FROST, wrote to Mr. Chapman, N. B. FENCE, in regard to a forthcoming meeting of manufacturers and made the following reference to a tender:

"At our November 20th meeting a basis was established on which all Dominion Government and Provincial Departments should be quoted. This discussion resulted from the wide range of prices submitted to one of the Departments on fencing for enclosing Airports. In January tenders were called for fencing, gates, and posts for delivery at Havelock, N. B., and from information it appears that the basis which was approved in November was not respected. If attending, will you please bring with you a copy of the tender which you submitted on this job, otherwise mail this by return."

(Exhibit 9517)

Further reference to the matter was made in a letter dated March 6, 1935 when Mr. Page informed Mr. Chapman that he was sending him the Minutes of the Meeting held on March 4:

"Copy of the proceedings of the Meeting, together with a new schedule of prices on Chain Link Fence, enclosed.

Farm Fence prices were confirmed without change.

Dealer prices are to be quoted Dominion Government enquiries, Quebec or Ontario, according to where delivery is specified. All were asked to table copies of their quotations on that January enquiry from the Department of National Defense [sic] for shipments to Havelock, N. B. We tabled your copy also and on comparison it was found that all had fully respected the approved prices with the exceptions [sic] of yourselves and your dealer, W. H. Thorne & Company, both of whom omitted the odd cents in the cost of the 884 rods of fence, making it \$384.00 and the exact price, as used by all others was \$384.54.

I was given the responsibility of bringing this to your attention and to ask that no deductions be made on future quotations. While the amount is very small it is considered a violation of our agreement and creates considerable disturbance.

Hope you find all of the minutes of the meeting satisfactory."

(Exhibit 9514)

Common Terms of Sale. Similarly, close attention was given to common terms of sale. On February 13, 1936, W. A. Bates, Fence Department, STELCO, Montreal, wrote, as follows, to A. L. Page, FROST, and sent copies to other fence company offices in Ontario and Quebec:

"Under date of Feb. 6th, you addressed a letter to the various Fence Manufacturers and attached up-to-date schedule of prices for the various Government Departments.

We notice that the New Brunswick Wire Fence Co. Limited, Moncton, N. B. was not sent a copy of the schedules at that time and it has come to our notice through a letter received from them that they recently quoted one of the Government Departments offering terms 2% - 30 days, whereas, the schedule definitely states terms - net 30 days.

It might be possible for you to keep this manufacturer posted and supply them with a copy of the schedule."

(Exhibit 3242)

Under date of February 19, 1936, J. Woods, manager, The Sarnia Fence Co. Ltd. made the following reply:

"This refers to your general letter of February 17th which calls for an acknowledgement, but since receiving copy of letter written to Mr. Page on February 13th, we now do not know what terms it will be general to offer to the Government. We have maintained the net thirty day arrangement but it looks as though the New Brunswick people have upset the situation and we would like to have you advise us definitely when this is settled as to what terms will now be offered."

(Exhibit 3255)

In answering Mr. Woods' letter on February 24, 1936, Mr. Bates wrote:

"We acknowledge receipt of your letter of Feb. 19th, asking us to advise you definitely as to what terms were finally

settled when quoting the Government.

Under date of Feb. 17th, we received a letter from the New Brunswick Wire Fence Co. Limited expressing their regrets that they were not informed of change in terms on sales to the Dominion Government and all Departments; following which they stated that had they had this information, they would certainly have quoted accordingly. We feel that this can be taken as an agreement on their part to follow these terms in future."

(Exhibit 3254)

Common Installation Charges. The undertaking of the erection of complete chain link fence by fence companies required agreement on installation charges as well as the prices of material if uniformity in prices of installed fence was to be secured. The extent to which details of erection charges were particularized in the price schedules agreed upon is described more fully further on in this report.

Correspondence between LUNDY and N. B. FENCE in 1933 indicates that for a time uniform prices in the sale of complete chain link fence were not maintained. In a letter dated May 29, 1933 A. R. Lundy wrote to A. C. Chapman, N. B. FENCE:

"The writer considers it very unfortunate fence manufacturers have acted so foolishly in regard to their quotations on this commodity. There is an effort being made now by Frost Steel & Wire Company and ourselves to have the ridiculous price cutting discontinued and quotations again established on a saner basis. A meeting was held of all the fence Companies, except yourselves, in Toronto last week, and it developed that the situation in Quebec Province, where there are only three of the manufacturers taking part, was even much worse than it is in Ontario, and the Steel Company of Canada seems to be quite willing to continue the fight, if I could rightly gauge their attitude. There will, however, be another meeting very soon, possibly before the 15th of June or thereabouts, and by that time we hope to be able to report some progress."

(Exhibit 9770)

Writing again to Mr. Chapman on July 11, 1933 Mr. Lundy commented:

". . . Have spent sometime on committees, and all day Monday of this week at a fence meeting, where very little was accomplished. Have been trying with Mr. Page, to line up the manufacturers of Chain Link fence, but the Steel Company of Canada, evidently [sic] prefer to continue to sell at prices anywhere from 25% to 40% off list, in their effort to get established in the industry. As it looks now this merry war will

continue, although wire manufacturers evidently agreed on an increase in price of wire, charging \$2.00 extra for copper bearing."

(Exhibit 9771)

2. Recording of Chain Link Fencing Quotations with S. J. Frame

The evidence does not disclose how long the situation referred to in these letters of Mr. Lundy persisted but by March, 1935 arrangements had been made to have S. J. Frame, who was engaged in trade association work in Toronto, act as secretary in connection with a system of recording chain link fencing quotations in his office. These arrangements were probably in the mind of A. L. Page, FROST, when he wrote as follows to A. C. Chapman, N. B. FENCE, in a letter dated March 15, 1935:

"There will be some few days delay in sending you the revised price schedules on Chain Link fence materials. These are now in the printers hands. Will send you five copies.

I think you will find this complete in every respect. Provision is being shown for a discount of 10% from the list on Highway Guard to the Government or other users, and a Trade Discount of 10% and 10% from the list to the Agents or Dealers.

The writer has spent a great deal of time in the past two weeks in the preparation and completion of plans for getting this industry on a more sound marketing basis, and trust that you will benefit equally with all others in the results."

(Exhibit 9521)

It does not appear to have taken long to get the system of recording chain link fencing tenders into effective operation. In a general letter dated July 11, 1935, A. L. Page wrote:

"The recording of Chain Link transactions with a central office appears to have worked out reasonably satisfactory, but there are several minor features which require to be discussed in the interests of all concerned."

(Exhibit 9526)

The actual terms of the arrangement with S. J. Frame are not in evidence but correspondence contained in the exhibits indicates that the fence companies sent to Mr. Frame's office copies of quotations made for the furnishing of complete chain link fence where the amount involved was \$200 or more and that Mr. Frame received from each company a fee for his services which, initially,

was set at one-half of one per cent of the value of the contracts secured by each manufacturer. The evidence of W. MacLean, who was employed in Mr. Frame's office during the period when copies of quotations for chain link fencing were sent in by fence companies, was as follows in regard to the checking of such quotations:

"Q. Now, I would like to ask you whether you frequently during the period 1935 to 1947 received copies of tenders which these various manufacturers had made or were making?

A. In season and during the freedom of the production of the fencing, say, we might, yes; each day would see its quota.

Q. And what was your understanding of the basis upon which these firms sent you copies? In other words, what is your understanding of why they sent you copies?

A. I would say to catch the mechanical errors and to check off the detail in accordance with the master copy of the price list that I had.

Q. And did you on occasion find errors?

A. Oh, yes.

Q. What did they do then?

A. Notified the company making an error.

Q. What did they do?

A. If all ---

MR. MacINTOSH: Surely he cannot give evidence as to that.

MR. GASCOIGNE: Q. Do you know what they did?

A. Well, I suppose from the legal sense I don't.

Q. Did you receive information from these companies informing you as to what they had done?

A. I believe I have on occasions received revised tenders, revised quotations.

Q. And when you say 'revised quotations' what do you mean?

A. I mean the error which I had pointed out to them had been corrected."

(Evidence, April 27, 1953,  
pp. 848-49)

Mr. C. C. Morin, FROST, gave the following evidence in regard to filing copies of quotations with Mr. Frame:

"Q. I would like to ask you further about this matter of filing your copies of your tenders with Mr. Frame. Were these copies filed before or after the tender was actually made or at the time of the tender?

A. You mean when the tender was sent to the customer?

Q. Yes. Did you file the copy of the tender that was to be made to the customer at Mr. Frame's office before you sent the quotation?

A. No, it was done at the same time. It was part of a carbon copy of the quotation and it would go out at the same time, approximately. Now, they may have missed the mail or something; I cannot be certain. But the practice was to send a copy to him when we sent the quotation.

Q. You see what I am driving at, Mr. Morin. What I am trying to establish clearly is whether the copies were sent to Mr. Frame's office and held there until a uniform price was established and only then were they sent.

A. No. Oh, no, no. No, we had the price list and the differences as a rule were little differences from reading blueprints which often turned up, and things like that.

Q. Yes.

A. But the prices, each firm had their own list of unit prices. And there were times when the footages were different, he would always report those. We always had in our quotation, as you have possibly noticed, that the fence would be measured up after it was finished because during the construction of it there were often changes; that is both industrial and otherwise.

Q. If you quoted on a job in which the Government of Canada had called for public tenders, did that same condition apply, the condition with respect to measuring up afterwards and making amendments?

A. We made it on our same quotation sheets.

Q. Did they accept the tenders on that basis?

A. No, not always. They accepted it on their basis as a rule." (Evidence, April 29, 1953, pp. 987-9)

The evidence of J. E. Morris, STELCO, on this subject was as follows:

"Q. Now, Mr. Morris, I understand that this answer you have just given was with respect to your practice. Now, I would like to ask you whether during the association days there were occasions on which discussion took place before tenders were made with your competitors?

A. No. Mr. Gascoigne, the purpose, naturally of the association was to have a clearing house and the only thing that the association secretary would communicate to us was that our quotation, our measurements, our interpretation of the specifications did not agree to a competitor's, and we would never even know who the competitor was. It could be any of the other members who were in the association. As a matter of good faith, we understood that would always be carried out. He may have called another man, another competitor, and said, 'It doesn't agree with another quotation,' but as to who it was -- and it wasn't the price. Naturally the prices, we understood, would be pretty well the same. It would be a matter of good faith that we would be acting on in that case. It might mean we had quoted an extra or left off a terminal post. If we quoted an extra, that was our fault, but if we left off a terminal post or interpreted the blue-pint to mean 1310 feet instead of 1325 or instead of 1350 it might be drawn to our attention. I don't know that I have ever even told our man to change it unless it was some glaring oversight that would mean we had entirely mis-read directions."

(Evidence, April, 30, 1953,  
pp. 1048-49)

There is some evidence with reference to the recording of tenders with Mr. Frame's office at a later period which indicates that, on occasion, there was some clearing of information with respect to prospective tenders. This evidence will be reviewed further on.

3. Woven Wire Fence Association

After S. J. Frame had been acting for some time as secretary in connection with chain link fencing quotations it was decided to extend his duties to handle the business of the association generally. This decision was reported by A. R. Lundy in a letter of December 12, 1936 to A. C. Chapman, N. B. FENCE, as follows:

"At the Meeting yesterday a great many matters were discussed. Prices on Barb., Galvanized and Oiled & Annealed Wire were increased to some extent, as were Steel Posts.

You will be advised from the Secretary's office of these changes, and will be supplied with new price schedules and all information.

One matter which was discussed at length, not only at yesterday's Meeting but at the Meeting held October 1st, was the appointment of a permanent Secretary, to handle the business of the Association. It was the unqualified opinion of all attending both Meetings that the Association had been of great benefit to the industry as a whole, and that a continuation of it on the most efficient basis was desirable. It was also unanimously decided that the farm fence section would benefit if the work of the Secretary was extended to supervise and to handle farm fence matters. When this decision was reached, the services demanded of the Secretary were increased to a very considerable extent, and to cover these services a tentative renumeration [sic] of \$500.00 per year was set. This figure covers the services of a Secretary in attending four Meetings per year. Also in preparing and circularizing minutes of Meetings, price schedules and generally taking care of the business of the Association. There was considerable discussion as to how this charge should be apportioned among the members. There was some feeling that it should be divided equally among all manufacturers, and, we, of course, could not agree to this, for your sake as well as our own. It was finally suggested that this cost be divided as follows:

Steel Company	-	\$100.00
Frost Steel	-	100.00
Dosco	-	100.00
Sarnia Fence Co.	-	75.00
Lundy Fence Co.	-	75.00
New Brunswick Wire Co.	-	50.00

I was asked to write you and obtain your approval of this division of charges. It is, of course, obvious that the big companies are not paying in proportion to their sales, but on the other hand, there is no doubt that it is easily worth \$75.00 or \$100.00 to us to have the Association operating efficiently; and the benefit of having a central office to take care of the business is easily worth the figure proportioned to you.

Another function of the Secretary's office, which we feel will prevent not only misunderstandings, but actual cut prices, is that by special arrangements he may investigate complaints. If, for instance, we become convinced that one of our competitors is offering special price or terms to some dealer, we report the

matter to the Secretary's office and ask him to investigate it. He is then empowered to go to the alleged offender's office and examine all books and records. If he finds that an irregular price does exist, the offender is obliged to pay his expenses, and the matter is reported to the industry as a whole. If, however, the complaint is not justified, the complainant is obliged to pay the costs of such investigation.

On the whole we are very pleased with the way things are working out, and feel that it is well worth our while to pay the charges on the basis outlined above. We hope you will approve the proportion assigned to you, and we would be very much obliged if we could have your approval, together with your comments, by an early mail."

(Exhibits 9535-6)

Mr. Lundy added a postscript to his letter giving the name and address of S. J. Frame as secretary of the association. In replying to this letter on December 16, 1936, Mr. Chapman wrote that he regarded the appointment of a permanent secretary as essential and that he was enclosing a cheque for his company's contribution (Exhibit 9538).

The remuneration referred to in Mr. Lundy's letter of December 12, 1936 apparently related only to the additional duties then being assumed by the secretary as the payments for Mr. Frame's services in connection with chain link fencing quotations continued to be based on the value of contracts secured by each company. When W. MacLean was questioned as to the occasions on which an examination was made of the records of a fence manufacturer he stated that he recalled only two occasions when this was done, but he was unable to give any details of the circumstances (Evidence, April 27, 1953, pp. 850-1).

The business of the Woven Wire Fence Association was conducted in two sections, the Farm Fence Division and the Chain Link Fence Division. The meetings which were held appear to have embraced both divisions but there were separate price schedules for each division and a different basis of payment for the services of the secretary in connection with the work of the two divisions. In the case of the Chain Link Fence Division the secretary continued to be concerned with the recording of quotations made by the fence companies.

The price schedules of the Woven Wire Fence Association were detailed lists which appear to have been designed to eliminate as far as possible any occasion for a difference in price arising in a similar sale or offer of fencing made by any of the fence companies. Discount terms, classes of customers, weights of fencing, freight terms and many other features of pricing were included in the farm

fence or chain link fence schedules where necessary to provide a uniform basis for price quotations. When changes were made from time to time in the general price basis it was necessary to see that all the necessary changes were made in the detailed prices to maintain uniformity in the price lists of the respective companies. As N. B. FENCE was generally represented at association meetings by a representative of another manufacturer, usually A. R. Lundy, information would often be sent to that company by letter after a meeting giving an account of the business done. Such an account of a meeting on March 25, 1937 was given in a letter of March 30, 1937 from R. W. MacKeen, DOSCO, to A. C. Chapman, N. B. FENCE. After referring to increases in the price of wire, Mr. MacKeen wrote:

"As would be expected, the adoption of the foregoing immediately precipitated a discussion of the price which could and would be made in the price of fencing. It was agreed that farm fence prices would advance immediately by \$8.00 per ton based on resale list and again, and this is important, that the Ontario Schedule, after being so changed, would also apply to Quebec and Maritimes territory. This simply means that there will be one schedule instead of several as heretofore, covering the different markets, and we have no doubt but that you would be quite in sympathy with this change.

The price of chain link fabric advanced \$8.00 per ton while the price of complete chain link fence including gates, posts, etc., advanced 15% with an increase also of 5¢ per lineal foot for the erection charges. Steel Fence Posts, Staples, for the Railways, Brass Wire, Barb Wire, and Fencing for the Railways, all increased in price, the full details of which would be forwarded to you in due course by the Secretary, meanwhile, we are pleased now to enclose a copy of the schedule covering various of the items to which we have referred, this schedule having been approved and printed and distributed to the different representatives while present at the meeting, so that all interests took away with them exactly the same information.

More complete information would no doubt reach you promptly through the Secretary, if not, should there be additional data required, we would be glad indeed of an opportunity to be of any assistance possible in this regard."

(Exhibits 9596-7)

No record of discussions at meetings of the Woven Wire Fence Association is in evidence, but it is evident from references in the correspondence contained in the exhibits that there would be discussion before changes in prices or other factors would be adopted. In a letter to A. C. Chapman, N. B. FENCE, on June 30, 1937, A. R. Lundy wrote:

"Wire makers have increased the cost of wire to fence manufacturers \$8.00 per ton. At the fence meeting the list price on fence was advanced \$10.00 per ton, which just about takes care of the discount to dealers, plus the extra sales tax on this increase. We endeavoured to have the list advanced \$12.00 in place of \$10.00, but were not successful."

(Exhibit 9558)

A little over a year later when there was a reduction in prices, A. R. Lundy wrote to A. C. Chapman on August 20, 1938, following a meeting:

"Mr. Kell of The Steel Company of Canada came to the meeting fully prepared to make a reduction in wire prices of \$4.00 per ton, but at least \$7.00 in the price of fencing. We knew he would take this position beforehand, and had consulted with Mr. Lang about it. We received the fullest support from Mr. Lang, through Mr. McKeen [sic], at the meeting, with the result the spread agreed upon is as follows:-

Wire reduction per ton \$4.00

Fence reduction per ton \$5.00 from the list. This means about \$4.26 per ton to the dealer."

(Exhibit 9351)

There is in evidence a price schedule for Chain Link Industrial Fence, Gates and Terminal Posts, Tennis Court Enclosures, Fur Farm Fabric and Erection, dated August 18, 1938 (Exhibit 9801-13) which contains details as to specifications and methods to be followed in quoting unit prices for materials, discounts, freight allowances or rates and terms and erection charges and conditions of sale. Some excerpts from this schedule will serve to indicate the nature of the directions:

"QUOTATIONS All quotations must show unit prices for materials and erection; but where the total cost of the proposed installation is required, the number of feet of fence, number and kind of terminal posts, price of each, number and kind of gates, with the price per foot, cost of erection and extras, if any, must be shown and the whole, supplemented by the following paragraphs:

'This Quotation is based on a minimum of (500 feet, when overall measurement is between 500 and 1,000 feet, and a minimum of 1,000 feet, when overall measurement

is 1,000 feet or over.)

After completion and accurate measurement, if a greater or lesser footage is found to have been supplied and erected than that calculated, same will be charged for, or credited, at the above unit prices for materials and the charge for erection.'

FRACTIONS OF CENTS

Where fractions of cents appear in extensions or totals, these are to be dropped.

TERMINAL POSTS

Where the location of any Terminal Post is such that bracing is not required, no deduction is to be made in the price of such a Terminal Post not supplied with braces. When stepping down from one height of fence to another, terminal post must be used and charged for at price of corner post for highest height of fence involved.

UNUSUAL EXTRAS

Where extras are specified and there is no established schedule to provide for a charge of such extras, costs shall be figured, 50% added to this cost, and charge for the extras made accordingly.

FITTINGS

The sale of Fittings separately is strictly prohibited.

...

SUPERVISION:

Where Purchaser undertakes erection, but requires the services of an experienced and competent Foreman, a charge for the working supervisor and the use of his tools is to be made of \$1.00 per hour, including Board and Lodging; but plus travelling expenses to and from the Job, equalized on Hamilton, Toronto, Montreal, Sarnia and Niagara Falls. If more than one job can be done in a locality with only one transportation charge each job must be charged the full transportation cost just as though a separate journey was made for each job.

LOAN OF ERECTION TOOLS: For the loan of Erection Tools a charge of \$25.00 is to be made and upon return of tools, credit of \$20.00 is to be given. No Discount or Commission to be allowed on Erection Charges.

For further clauses regarding erection and for clauses regarding removal see next page.

REMOVAL OF CHAIN LINK FENCE: Where the erection contract provides for removal of existing Chain Link Fence, a standard charge is to be made of 1/3 the price shown on the Chain Link erection schedule for fence of corresponding height for such removal and the full standard erection charge applies for the re-erection if it is re-erected.

Formula - Figure the total quantity to be removed at the full rate for erection of fence of corresponding height, carrying the result out to a fraction. Divide this result by three then drop the fraction. Where fraction of a foot is involved see formula below.

REMOVAL OF OTHER OBSTRUCTIONS: For removal of other obstructions or types of fence charge is to be made at the rate of 75¢ per hour per man on the job.

SALVAGED MATERIAL: There shall be no allowance made for material salvaged from existing fence above referred to."

(Exhibits 9802, 9811-12)

In the pre-war period purchases of fencing by the Government of Canada were considered sufficiently important by the association to call for special directions in making quotations. In a letter dated June 30, 1937 from the office of S. J. Frame to A. C. Chapman, N. B. FENCE, reference is made to an airport at Nakina, Ontario and the letter then states:

"As agreed at Meeting held on June 25, 1937, will you please send to me a copy of any quotation which you filed on the above job, either direct to the Department or through a Dealer."

(Exhibit 9643)

A circular bearing the dates "Issued February 1, 1938. Effective January 3, 1938", contained the following directions:

"FARM FENCE & GATES TO DOMINION GOVERNMENT

(All Departments)

When quoting Dominion Government - All Departments, use the dealers' price list for the territory to which materials are being shipped and the price applying to whichever classification the order comes under.

Carload Quantities Fence and Gates

In One Thousand-Rod Quantities Fence and Gates

Less Carload Quantities Fence and Gates

Sales Tax included.      Net Thirty Days.

Members to file with the Secretary (to be filed and compared by him) a copy of all quotations made to all departments of the Federal Government.

When quoting Dominion Government Departments a delivered price in any of the three Prairie Provinces, use Old Ontario, Southern Quebec and Maritime Provinces Dealers' List F. O. B. Head of Lakes during the period of navigation, and add car or less car (according to the quantities covered in the enquiry) rate of freight from Head of Lakes to destination.

If shipped all rail quote F. O. B. factories plus rate of freight applicable (C. L. or L. C. L.) less 50¢ per 100 lbs. allowance.

Dominion Government business (all Departments) to be quoted direct by manufacturer (no middleman). If quoting middleman quote regular dealers' price applying to territory in which destination of materials is situated and classification of quantity. No commission is to be given to dealers on Dominion or Provincial Government (all Departments) purchases placed direct with manufacturers. This applies to the Provinces of Ontario, Quebec, Maritimes and the West."

(Exhibit 2374)

Arrangements to confine production of fencing to certain standard styles appear to have been continued in the period prior to the war. In a general letter to other fence companies, under date of May 4, 1938, J. Woods, The Sarnia Fence Co. Ltd., referred to the loss of an order because standard fencing was offered when non-standard specifications had been requested. The letter went on:

"We had no complaint or objection to the specifications until this morning when we received a telegram from Dorchester advising that they would not accept standard specifications and that the fence would be refused. We do not understand this attitude at such a late date and, while we do not object to other people getting this order if we did not have to stand for freight, we trust all manufacturers will co-operate with us in this connection.

As we understand, no one makes this style of fence and that it would not be made by any manufacturer unless the

quantity amounted to 1000 rods or over."

(Exhibit 9310)

A reply to this letter by Stuart Kell, STELCO, on May 10, 1938 contained the following:

"We quoted on a regular style, 948, and will not supply anything else. We hope this is the policy followed by all, in keeping with our agreement.

There is only one thing we do not quite understand, and that is your reference to a thousand rods or over. To the best of our knowledge there is no stipulation that any quantity permits a Manufacturer to depart from the standard styles adopted, and we would feel that no standard styles should be made by anyone without consultation with the other manufacturers."

(Exhibit 9332)

Mr. Kell corrected the last sentence of his letter in a further letter of May 11, 1938, in which he wrote:

"I regret there was an error in my letter of the 10th. As you will have surmised, what I intended to say in the last sentence was 'no other than standard styles should be made by anyone without consultation with the other manufacturers.'"

(Exhibit 9333)

The matter was taken up with N. B. FENCE by R. W. MacKeen, DOSCO, and on May 28, 1938 the former made the following reply:

"We received the order from the Department of Justice for this special Fencing, after we had received notice that the order had been filled by another concern, and although this has been a standard fencing with us for a number of years, or in other words we have been manufacturing this material for a number of years for the Dept. of Justice, although we do not carry it in stock.

We have returned the order to the Department of Justice, and notified them that we could not fill it."

(Exhibit 9379)

#### 4. Period of Wartime Controls

As the steel industry is essential to any programme of national defence the co-operation of the industry has been sought by the government to assist in maintaining the flow of essential supplies and

general stability in the price level. On the outbreak of war in 1939, R. C. Vaughan, then Chairman of the Defence Purchasing Board, enlisted the co-operation of DOSCO and STELCO in adopting an informal type of price control under which it appears to have been implied that basic steel prices would not be increased above the pre-war level without prior consultation with government officials (Exhibit HE 48). In the following year at a meeting of primary steel producers with the Minister of Munitions and Supply on July 4, 1940, the latter imposed an obligation that steel prices in Canada were not to be increased without the approval of the Steel Controller (Exhibit HE 38-1).

There is no evidence in the inquiry that the informal controls which preceded the general price ceiling under the Wartime Prices and Trade Board came to bear directly upon woven wire fencing. They did, of course, have a direct bearing on the cost of basic materials from Canadian sources used in the manufacture of fencing. There is some evidence that increases in the prices of some lines of fencing were made in 1940. In a letter dated April 12, 1940, A. L. Page, FROST, writing to W. H. Mortimer, STELCO, Hamilton, in regard to the prices of chain link gates, stated:

" . . . a uniform increase in price was approved at the April 4th meeting, . . . "

(Exhibit 6615)

Exhibit 2419-37 is a Chain Link Fence Price Schedule dated April 4, 1940 in which page 4 sets out prices for chain link gates and panels which are approximately 10 per cent higher for each size than the prices listed in a similar schedule dated August 18, 1938 (Exhibit 9801-13). The prices of chain link fence in the former are approximately 5 per cent higher than in the latter. Correspondence between E. H. Bickle, CANADIAN STEEL, and R. J. Lundy, LUNDY, in the spring of 1941 relating to prices to be charged to certain mail order houses and the establishment of resale prices by the latter indicates that an advance in the price of fence gates was in contemplation. In a letter dated March 25, 1941 R. J. Lundy wrote to E. H. Bickle:

" . . . No doubt you are having Eatons advance their gate prices for their Fall and Winter catalogue, as gate prices will be advancing 15% around the 1st of July. We would like to have your opinion as to new Mail Order catalogue prices on gates. We presume that prices to the Mail Order Houses will be the present prices plus 15%. Whether the re-sale prices will be raised the amount of the additional cost, or whether they should be advanced 15% above the present published prices, is a question in my mind.

We thought, also, that although there is no definite indication of advanced wire prices, and consequently fence prices, that it might be advisable to have Eatons and Simpsons raise their prices .01¢ or .02¢ per rod, depending on the weight of the style. This slight advance could not be frowned upon by the Government or the consumer, as in most other lines they are having to pay slightly higher prices."

(Exhibit 8922)

The advance in gate prices and presumably in complete chain link fence prices in this period was related to increases in the prices of pipe which is embodied in both products. The wholesale price index of the Dominion Bureau of Statistics for steel pipe was 132.5 in 1941 compared with 90.7 in 1939.

There is no evidence of any changes in the prices of farm fence from 1938 until the imposition of the general price ceiling in 1941.

As the scale of military activity and production increased there were greater demands for fencing of military and other properties. Under the date July 4, 1940, a schedule of the Chain Link Fence Division gave the following directions for quoting on a certain type of fencing for airports:

"Dominion Government  
Airport jobs calling  
for erection of 6x6  
mesh fabric on Cedar  
posts

In respect to enquiries for  
Dominion Government Airport jobs -  
either direct or through a contractor -  
calling for materials indicating  
erection on other than steel posts -

- (a) Manufacturers will quote only on materials of their own manufacture.
- (b) The manufacturer will not undertake the erection of such jobs, nor will he locate for the enquirers, outside erectors prepared to undertake the installations.

The reason for the foregoing is that manufacturers of fence are not in touch with the source of supplies for posts or prevailing prices thereon, and believe that the contractor on the building is in a better position to purchase posts, as well as employ his men already on the job to do the fence building.

Government  
Airport jobs

To facilitate quoting on Government Airport jobs, where only materials of makers own manufacture are being quoted the following prices have been developed -

5' fabric - \$ 8.75 per 100 lineal feet) All  
6' " " - 10.50 " " " ) based  
7' " " - 12.25 " " " ) on  
present \$1.75  
100 sq. ft.  
price

3 strands of 4 x 4" Barb Wire - \$1.00 per 100  
lin. feet.

Basis of Sale -

Dealers - 5%) off both above fabric  
Dominion  
Government - 5%) and barb wire prices.  
Contractors - Above prices net.

All net 30 days  
All Sales Tax included.

Filing Quotations Copy of all quotations to Dominion and  
Provincial Governments and to Contractors  
and Dealers on Dominion Government Airport  
jobs, to be filed with Secretary."

(Exhibit 6663)

The question of fence manufacturers being concerned in the erection of fence on wooden posts appears to have been regarded seriously by the association. In the summer of 1940 inquiry was made as to the circumstances under which quotations were made for erection of a fence of this nature. A copy of a reply by E. H. Bickle on July 29, 1940 to an inquiry from S. J. Frame is in evidence:

"Woven Wire Fence (Farm Fence Division)  
Sales of Farm Fence to Contractors for  
Department of Transport

Reference is made to your letter of July 25th, together with copy of a letter written by Lundy Fence Company and the writer can confirm what he reported verbally to Mr. MacLean and which was in effect that we were also advised by a contractor that two other fence companies had quoted him on fencing for an airport and that they would arrange to have another party quote a price on the posts and for the erection.

The names of the companies were not supplied at that time, nor have we been able to find out since. We ourselves, only quoted on materials of our own manufacture and did not quote a price on wood posts or on the erection.

The writer would, of course, not express an opinion as regards the advisability of holding a special meeting to discuss this matter again but would of course, be governed by any comments which might emanate [sic] from our Montreal Office."

(Exhibit 8892)

There is also a letter dated August 5, 1940 from J. Woods, DOSCO, to E. H. Bickle with which the former enclosed a copy of a letter to R. J. Lundy asking for further particulars. The covering letter was as follows:

"Dept. of Transport  
Erecting farm fence on cedar posts.

We have your letter of the 2nd, and note you have an intimation that the Ryan Construction Company were told a dealer would be secured for them who could erect the fence.

I am writing Jack Lundy as per copy enclosed, but naturally we would like to have something definite before we go to a meeting and accuse any competitor of doing something which he has promised not to do."

(Exhibit 8889)

There is evidence that after 1939 information on quotations for government tenders was circulated by S. J. Frame to fence companies. Exhibit 8881 is a circular letter dated March 1, 1940 from the office of S. J. Frame referring to "Department of Mines and Resources in North Sydney, N.S." and stating: "For your information following has been registered with me." The letter then sets out quantities and prices for fencing. Exhibit 8880 is a copy of a letter dated March 2, 1940 to S. J. Frame from J. Woods, DOSCO, in which the latter refers to certain discussions with Mr. Bates of STELCO in regard to the same job and to the fact that certain quotations of STELCO differed from those registered with Mr. Frame. The letter concluded as follows:

"I believe Mr. Bates is willing to accept the other members' quotation of 7 1/2 cts per foot providing others do the same and providing the member who has named 79 cts accepts the 73 cts price. It seems Mr. Bates quoted the Department 73 cts before the inquiry was issued and now does not wish to advance his quotation.

This figure does not need to be sent to Ottawa until the 5th or 6th which would give you time to contact the member who quoted the price and advise all members what the situation is.

I believe Mr. Bates is writing you also in connection with this."

(Exhibit 8880)

A further letter dated March 4, 1940 from the office of S. J. Frame in regard to the same subject stated: "For your information following are the revised figures registered with me ." (Exhibit 8885). On March 19, 1940 the following letter was sent from the office of S. J. Frame to CANADIAN STEEL and presumably to other members of the Association:

"Woven Wire Fence (Chain Link Fence Division)  
Department of Mines and Resources - North Sydney, N. S.

Letter reading as follows has today been received by me -

'These Tenders closed in Ottawa on March 7th.

We have received word from the Department that this business has been placed with a local Dealer at a lower price than ours. We judge they mean by a local Dealer a Distributor located in the vicinity of Sydney.

Would you kindly check into this to learn which of the members has furnished prices to the Dealer concerned, as it is our understanding the Member is responsible for the Distributor's action.'

Please advise me did you quote a Distributor, and if so will you please find out what price the Distributor quoted to the Department.

In other words, as the Department claims to have placed this business at a lower price, I would appreciate your co-operation in helping me to either substantiate or disprove the claim, and oblige."

(Exhibit 8877)

In the case of another inquiry relating to Calgary, S. J Frame sent the following telegram to CANADIAN STEEL on September 14, 1940:

"IF IN RECEIPT ENQUIRY DELIVERED ERECTED UNIT  
PRICE SIX BY SIX CALGARY PLEASE WAIT FOR  
COMMUNICATION MONDAY"

(Exhibit 8876)

A letter of the same date to CANADIAN STEEL, from the office of S. J. Frame contained the following:

"Further to my telegram, following is the communication promised in my telegram of September 14 -

Fence	- \$ .53 per foot
Gates	52.40 per pair
Gate posts	11.51 each
Corner "	13.92 each

These prices include erection and delivery to job site, also, of course, Sales Tax.

Terms are Net 30 days."

(Exhibit 8875)

Circular letters were sent subsequently from the office of S. J. Frame inquiring whether an order had been received for the Department of Munitions and Supply, Calgary - #2 W. T. S. and on October 16, 1940 the following circular letter from Mr. Frame's office gave information about a tender submitted by a jobber:

"Woven Wire Fence (Chain Link Fence Division)  
Department of Munitions & Supply, Calgary - #2 W. T. S.

With further reference to my circular letter under date October 7th, regarding the above -

The following letter has been received by this office today from the Frost Steel & Wire Co. Limited -

'We are now in receipt of the Calgary Jobbers' explanation on the specification which he supplied for the Department of Munitions No. 2 W. T. S. job, Calgary. Some weeks in advance of the time that our Watchman Fence Specification was adopted for the protection of buildings or Air Training properties, they were asked to quote on Protection Fencing in a 6-ft. overall height, and filed quotations based on earlier schedules that had been placed in their hands. Later, when the Government commenced to make enquiries for this type of fence and fence companies standardized on it, they accepted these prices as applying on all future enquiries. The statement was made that they had no intention of disturbing any established price or specification, and that on future enquiries will quote according to schedules.

In view of the explanation I am not asking for any information as to the selling price on the combination

furnished by them."

As mentioned by Frost Steel & Wire Company Limited their representative, on all future enquiries, will quote according to schedule."

(Exhibit 8870)

In the spring of 1941 the Department of Munitions and Supply apparently included a clause on invitations to tender for fencing limiting profits to 5 per cent. Manufacturers of wire fencing considered that the 5 per cent profit clause was not appropriate to the conditions existing in connection with the supply and erection of fencing on government contracts and sought a conference with the Department of Munitions and Supply to see if a more satisfactory arrangement could be established. An unsigned memorandum dated April 17, 1941 from the files of FROST sets out the results of a conference in the following way:

"A Meeting was held this morning, April 17th, 1941, in the office of Mr. Malkin, at which were present as follows: Mr. Malkin and Mr. Eaton, Munitions and Supply, and Mr. Stuart Kell, Mr. Page, Mr. A. R. Lundy and Mr. McEvoy, representing the Chain Link Fence Industry of Canada.

After considerable discussion in regard to the placing of orders for chain link fence, it was decided as follows:

Bids should be asked for on the requisitions that we now hold, showing the approximate value. On receipt of these bids, Mr. Eaton will allocate the orders amongst the firms interested. The order will contain a clause as follows:

'It is understood and agreed that the price quoted in this order is a "ceiling price" and that it contains a profit of not more than 10% on the actual cost related to this order as determined in accordance with the Costing Memorandum Form M. & S. 433 attached hereto. You agree to keep such records with respect to this order as are required by the said costing memorandum and that such records may be audited by a Government Auditor.

It is further understood and agreed that if such an audit should establish that the profit accruing to you on this order is in excess of the aforesaid 10% on the actual cost determined as aforesaid, the said "ceiling price" shall be adjusted downward so that the profit on this order shall [sic] be 10% on such actual cost."

(Exhibit 7231)

It was suggested in the inquiry that the arrangement arrived

at went so far as to amount to a continued allocation of business among the fence companies with the co-operation of the Association. The evidence, on the whole, does not bear out this suggestion but rather indicates that the Department of Munitions and Supply continued to call for competitive bids for fencing with an over-riding profit limitation. The language in the memorandum quoted above in regard to allocating orders appears to have reference to invitations outstanding which may have been held up pending the conference on the profit clause.

In May, 1941, four members of the Association submitted tenders to the Department of Munitions and Supply for fencing at Kingston. Apparently the specifications called for longer than standard posts and three of the members stated that their quotations were for standard fence while one member, FROST, did not qualify its tender. This difference was brought to FROST's attention in a letter of May 7, 1941 from the office of S. J. Frame, which included the following:

"1. The writer is not questioning prices quoted by you on May 1st, 1941, such prices being regular standard prices in accordance with schedule.

2. Your remarks that you have recognized this enquiry to be a part of an order received by you through a contractor last year, but the erection of which was postponed till this Spring, are noted. May the writer point out, however, that as this enquiry comes directly from the Government it is an entirely separate transaction.

3. Comparison of copy of your quotation with that of other members' shows that whereas they have shown -

MEMBER #1 - Fencing which would be supplied is our standard and is in accordance with that accepted by the Department of Munitions & Supply over the past year and a half.

MEMBER #2 - Standard length posts, as supplied for a year and a half to the Department of Munitions & Supply at various airports, will be supplied on this job.

MEMBER #3 - We notice in your specification for miscellaneous items that you call for concrete and length of posts slightly different from those previously supplied on this standard fence, therefore, our prices are at standard which has been supplied to the Department for approximately a year and a half.

you have not so specified; nor have you shown the length of the posts covered by the standard prices quoted by you.

4. The writer is still of the opinion that you should make it clear to the prospect that the fence quoted upon by you is for your standard and is in accordance with that accepted by the Department during the last year and a half.

5. In view of the difference still existing between your quotation and that filed by the others, I am today sending a copy of this letter to them."

(Exhibit 9069)

Under date of September 11, 1941, the following circular letter was sent from Mr. Frame's office:

"Woven Wire Fence (Chain Link Fence Division)  
Department of Munitions and Supply, Bowden, Alta.

A member writes me under date September 10, 1941, as follows:

'We have today been advised by the Purchasing Agent in Calgary that order has been placed elsewhere to better advantage. Will you please inquire in connection with this, and in doing so, we suggest that you ask whether the order has been placed directly by the Department or indirectly through some representative. If the latter, please inquire about the price at which the business was taken.'

Please advise did you receive this order either directly from the Department or indirectly through a representative, and if through the latter please advise the price at which the order was taken, and oblige,"

(Exhibit 9091)

On September 19, 1941 a further letter from Mr. Frame's office stated:

"Word in answer to my enquiry has today been received from the Lundy Fence Company that they have received this order through Marshall-Wells Limited.

When invoice comes through report will be made as to prices."

(Exhibit 9087)

Toward the end of 1941 question arose among members of the Association as to the price to be charged for winter erection of fence. According to the correspondence in evidence one company desired cost plus 10 per cent, another the extra for winter erection, while a third was making no addition in its quotations, (Exhibits 9113-4).

Under date of December 9, 1941 the following circular letter from the office of S. J. Frame outlined the attitude of LUNDY toward continued exchange of information prior to the submission of quotations:

"Woven Wire Fence (Chain Link Fence Division)  
Quotations to Dominion Government Departments  
by The Lundy Fence Company

In view of the difficulty experienced in getting a decision and of the fact that two quotations had to be rushed in at the last minute and the idea of quoting on two others had to be abandoned entirely the Lundy Fence Company has asked me to inform you that from now on they will figure their own Federal quotations, from the Association set-up without consultation with this office or any other office unless the inquiry contains specials.

The Lundy Fence Company advise that this does not mean they are not prepared to consider suggestions as to price of erection or freight rates where freight is involved but they insist that such proposals must come soon after the receipt of the inquiry as it is to eliminate last minute rushes that they have decided to take this action."

(Exhibit 8901)

It has already been indicated that the situation with respect to steel became a matter of government concern immediately on the outbreak of war and various forms of control were employed during the war and post-war period to ensure the meeting of essential requirements. The Statement of Evidence gave the following brief summary of wartime controls, other than those relating to prices:

"The first steel controller was appointed on June 24, 1940, by P. C. 2742, which was later amended as follows: on February 17, 1941, by P. C. 1170; on April 8, 1949, [sic] by P. C. 2448; on August 29, 1941, by P. C. 6835; on September 20, 1941, by P. C. 7359, and on September 9, 1942, by P. C. 8053. On July 24, 1940, he met with the Minister of Munitions and Supply and the primary steel manufacturers. The latter promised their full co-operation in boosting production and maintaining prices at existing levels. (J. de N. Kennedy: History of the Department of Munitions and Supply, Vol. II, King's Printer, Ottawa, 1950, p. 209 and Exhibit 6065-6). The general principle of control used by the Steel Controller was an informal allocation system of the manufacturers' output of primary steel based upon examination of and use to which raw materials would be put. (Kennedy: op cit p. 213). Until April 1942 civilian demand for fence and other steel wire had been met from inventory, but after that time several orders

were imposed restricting the amount of wire which could be sold. These restrictions were lifted on December 20, 1943. (Kennedy: op cit p. 224). The relevant order was S. C. 31A. No record has been found of any orders of the Steel Controller relating directly to wire fencing.

The Controller of Supplies was also concerned with the matter of conservation of steel and, according to Exhibit 4950-1, issued order C. S. 26 on December 15, 1941, prohibiting the production of chain link fence, the sale of which was also prohibited after April 30, 1942. P. C. 504 of January 23, 1943, transferred control over all goods designated as 'supplies' to the Wartime Prices and Trade Board and orders of the Controller of Supplies were made orders of the W. P. T. B. Thereafter the industry operated under a standardization plan at the request of W. P. T. B., reducing the number of styles of farm fence and eliminating the production of lawn fence, lawn border and chain link fence except for agricultural purposes. As these were informal arrangements, not the subject of administrative orders, there is no record of the precise details. They are referred to in a general way in a letter from the Administrator of Fabricated Steel and Non-Ferrous Metals, dated April 10, 1944, which removed the restrictions (Exhibit 4950-1). The evidence of the representatives of the associated companies was that supplies of wire remained insufficient for some years after this to meet the demand for farm fence and to produce these non-essential types at the same time."

Exhibit 4950-1 is a copy of a letter dated January 28, 1948 from J. E. Morris, STELCO, to H. K. Wilby which appears as follows:

"Under order CS 26, December 15, 1941 Department of Munitions & Supply signed by A. H. Williamson controller of supplies, production of chain link was prohibited and from & after April 30, 1942 sales of such material was also prohibited.

Restrictions were removed by R. A. H. Taylor copy of letter below. You will note the last two lines in paragraph No. 3. To comply with this request the manufacturers voluntarily maintained the restrictions and because of shortage of wire and pipe, the situation is the same today.

#### THE WARTIME PRICES AND TRADE BOARD

7th Floor,  
Lumsden Bldg.,  
Toronto, Ont.  
April 10th, 1944.

The Steel Company of Canada Ltd.,  
Montreal, Que.

Dear Sirs:

The fencing industry has been operating under an informal standardization plan at the request of the Wartime Prices and Trade Board. Under this plan, the industry has standardized on certain styles of Farm, Hog and Chicken Fence. The manufacture of Lawn Fence, Lawn Border or Chain Link Fence except for Agricultural purposes, was not permitted.

In view of the increased supply of wire now available, the W. P. T. B. is now withdrawing all its restrictions covering the manufacture of all styles of fence. The manufacture of the prohibited types will now be permitted by the Board and it will no longer be necessary to obtain permits from this office for industrial installations of security fence.

Should the industry feel inclined to continue any of the simplification and standardization principles, under which it has been operating over the past year, it may do so on its own decision. The Board is only interested in seeing that the industry produces appropriate and sufficient quantities of Agricultural fence.

In returning to production of all types of fence, the manufacturers must sell these products at basic period prices, no increases will be permitted.

As these new lines of fence will be commodities in short supply, the Board policy on equitable distribution must be followed; the manufacturers must first take care of their customers on record in 1941. A manufacturer may only open new accounts when he has been able to satisfy this office that the production exceeds the demand. We ask the co-operation of the industry in seeing that these items are equitably distributed to the most essential users.

We appreciate very much the co-operation the industry has given this Administration in controlling the production of fencing over the past two years.

Yours very truly,

(Signed) R. A. H. Taylor.

Administrator,  
Fabricated Steel and  
Non-Ferrous Metals."

The following additional information is given in the Statement of Evidence with reference to wartime controls:

"On February 20, 1945, S. C. 36 was passed, which may have had some effect in limiting supplies of wire and wire rods to the industry. However, on November 21, 1945, all orders and other directives of the Steel Controller were revoked by S. C. 37."

The functions and duties of the Department of Munitions and Supply were taken over at the beginning of 1946 by the newly created Department of Reconstruction and Supply. Shortly thereafter, by P. C. 245 of January 23, 1946, amended by P. C. 520 of February 15, 1946, a steel controller was appointed and regulations giving powers to control steel and equipment were established. The Statement of Evidence makes the following reference to these regulations:

"The basic regulations remained in effect until April 1, 1950, when they were revoked under P. C. 1270. There is no record of the Steel Controller using any of his powers directly in relation to the wire fencing industry, however, except to the extent that S. C. 1-48 of June 1, 1948, limited the availability of wire to the industry. This order required that an increased amount of wire be made available for the production of nails, amounting to 50% of the average monthly tonnage of wire made available for the production of barbed wire, plus 33 1/3% of that available for fence manufacture. It applied to the period June 1 to October 31, 1948, and the basic period was the first four months of the year."

The re-imposition of steel control in January, 1946, is stated in the annual report of W. P. T. B. to have been due to the prospect of an acute shortage of steel as a result of a steel strike in the United States.

No inaccuracies were pointed out in the description of emergency controls but it was represented on behalf of interested parties during argument that informal controls by the government played an important part in the conduct of the fencing industry from the outbreak of war and throughout the post-war period.

The emphasis on production of farm fence during the period of the war and immediately thereafter resulted in the tonnage of fencing produced in each year exceeding the total in either 1938 or 1939 and, as will be seen by the table in the Appendix, rising substantially higher by 1944.

The Woven Wire Fence Association continued its activities through the office of S. J. Frame during the period of wartime controls. Some witnesses indicated that there were many meetings

devoted to problems of standardization and simplification of products in furtherance of the policy requested by the Wartime Prices and Trade Board. This plan, as has already been indicated, was officially withdrawn in April, 1944 and the members of the industry were left free to re-introduce other lines of fence, although the interest of W. P. T. B. in seeing that sufficient and appropriate quantities of agricultural fence continued to be produced was clearly indicated. Until the relaxation of price ceilings there was no opportunity for the Association to engage itself with general price revisions, although individual fence companies could apply for price authorizations for lines not manufactured during the basic period in 1941.

The prohibition of the production of heavy chain link fence after March 31, 1942 and of its sale after April 30, 1942 must have decreased the volume of contracts for the sale and installation of chain link fencing and this is borne out by the figures furnished by some fence companies, which had information available for the war period, showing a very substantial reduction in the payments to S. J. Frame in connection with the Association during the period when the prohibition was in effect. These payments, it will be recalled, were based for one division of the Association on the value of fence contracts received. Square mesh fencing was available throughout the period and contracts continued to be taken for this type of fence and the system of registering contracts with the office of S. J. Frame remained in effect. A letter dated December 7, 1944 from the office of S. J. Frame to N. B. FENCE contained the following:

"As 6 x 6 fencing is now part of the Chain Link schedule and subject to Chain Link Fencing rules, it was agreed at meeting April 9, 1941 that sales of 6 x 6 complete fencing of \$200.00 and over would be reported to the Secretary as are Chain Link Fence jobs.

Please, therefore, see that sales made during November of 6 x 6 complete fence for \$200.00 and over are included in this report.

After making notations on the said list of contracts, please return to me.

This is for the purpose of billing out Secretary's fee for the month of November, 1944, which according to the ruling in arrangement, is set at .69% of the total value of contracts awarded for \$200.00 or over."

(Exhibit 9448)

In a letter dated June 29, 1943 from the office of S. J. Frame to FROST, referring to a copy of a quotation submitted by the latter for a job for the Canadian Broadcasting Corporation, Sackville, N. B., the following paragraphs appear:

"Word is today going forward to the maker proposing the prices issued by this office on June 18th advising of your quotation and the quantities shown therein.

It is noted that the extension of gates on the outside fence reads \$81.90 whereas it should read \$82.00.

In addition it is noted that you have quoted materials F. O. B. job site, whereas when a supervisor is supplied delivery terms on materials are the same as when materials only are supplied namely F. O. B. nearest railway station.

Will you please see that these two items are corrected and let me have a copy of your correcting letter and oblige,"

(Exhibit 9889)

A reply to the foregoing letter from FROST on July 2, 1943 contained the following:

"Following receipt of your letter, the writer discussed the matter with Mr. John Woods of Dominion Steel and Coal Corporation.

We were quite satisfied that our measurements were in accordance with the rather incomplete details shown on their plan and given to us by an official of Canadian Broadcasting Corp. On the other hand Mr. John Woods was satisfied that his measurements were alright.

We informed Mr. John Woods that we were not in accord with his proposal to quote on Chain Link.

Copy of our letter of June 28th to the contractor to whom the quotations referred to were sent is enclosed.

We have today advised him in regard to the freight as per the attached copy. In view of our reference to measurements being only approximate, we do not feel it necessary to revise the price for the gates from \$81.90 to \$82.00."

(Exhibit 9888)

## 5. Removal of Wartime Controls

The first general change in the price of fencing after the establishment of price ceilings took place in 1946 when Order No. 617 of the W. P. T. B., effective April 1, 1946 authorized a maximum increase of 12 1/2 per cent in the prices of fencing and fence gates,

posts and fittings. The circumstances surrounding this price increase are described as follows in the report of the Wartime Prices and Trade Board for the year 1946:

"In April 1946, a general price increase was authorized for the full range of primary iron and steel products. There had been no general adjustment in steel prices since 1940 and there was no doubt that costs of production were substantially, and, in many respects, permanently higher. This action was taken after months of investigation had clearly established the need for it. Provision was made to permit the price increases authorized for primary iron and steel products to be incorporated automatically into comparable price adjustments by many users of the basic steel products. This automatic adjustment was necessary because iron and steel is used as a raw material by a host of secondary manufacturers many of whom were not in a position to absorb this increase in their costs. It would have been quite impracticable to deal with the resulting flood of applications for price adjustments without serious and disturbing delays. The automatic adjustment was, therefore, applied to the majority of steel users though it was withheld from certain industries the products of which were of special importance."

In January, 1947, some fencing lines were removed from the price ceiling and price increases were permitted under W. P. T. B. Order No. 698 on those lines remaining under control which were affected by an increase in the cost of zinc, which had been authorized under Order No. A-2247, effective January 22, 1947.

The following description of the decontrol of prices of fencing is given in the Statement of Evidence:

"On January 13, 1947, certain fence products were removed from price control by Order #684 of the Wartime Prices and Trade Board, including the following products of the farm fence division: lawn fence, highway fence, light chain link fabric and railway fence. Virtually all products of the chain link division were decontrolled on this date, as follows: ornamental fence, chain link fence and fabrics, industrial protective fencing together with posts, gates and fittings used for protective fencing. Farm fence and related products remained under price control until September 15, 1947, when all fabricated steel products were decontrolled by W. P. T. B. Order #757."

The evidence in the inquiry does not contain any record of a meeting of the Association in connection with the price increase permitted in April, 1946 although a letter to John Woods, DOSCO, under date of June 24, 1946 from the office of S. J. Frame, referring to permission granted to LUNDY by W. P. T. B. to apply increase of 12 1/2 per cent to former selling price, including freight and sales tax, indicates that discussions as to price changes were carried on

through the Association (Exhibit 849). There is evidence that a meeting of the Price Committee of the Association was held on February 7, 1947 and that price schedules were drawn up for those lines under price control for which an increase in price was permitted, as well as for other lines no longer under formal price control. Subsequently members of the Association sent each other copies of their price lists as they had done on earlier occasions.

From the time of the withdrawal of the standardization and simplification plan under the Wartime Prices and Trade Board in April, 1944 leaving fence companies free to resume production of discontinued lines of fencing subject to the interest of the W. P. T. B. in adequate supplies of farm fencing, the question of when to undertake production of such lines was a subject of joint consideration by members of the Association. According to a letter dated December 18, 1944 from the office of S. J. Frame to N. B. FENCE, the decision was first made "to continue to supply only the styles and sizes presently listed in the Farm Fence Schedule" (Exhibit 9441).

The oral and documentary evidence indicates that this decision was taken and maintained because of the unsatisfied demand for farm fence and the shortage of materials. In the case of chain link fencing, in which pipe is a necessary part of a complete fence, considerable stress was laid on the shortage of pipe which persisted for a considerable period. It is also evident that the members of the Association did not wish to act independently in resuming production of any discontinued line of fencing, but desired to have a common understanding as to the resumption of production and the form it would take.

By 1947, it became the opinion of the officials of some fence companies that there might be a sufficient slackening in the demand for farm fence to allow some tonnage of wire to be used in the manufacture of lawn fencing. It may be seen from the statistics in the Appendix that the tonnage of lawn fence during the years in which it has been produced has formed a relatively small part of total fence production.

Possible resumption of the production of lawn fence and chain link fence was the subject of discussion among fence officials at meetings of the Association and in conversation and correspondence. An extract from minutes of a Farm Fence Meeting held on June 16, 1947 contained the following in a section dealing with lawn fence:

"After considerable discussion, it was agreed to continue the present policy of non-production but should a maker find himself in a position to go into the production of Lawn Fence, such Member is to notify the Secretary and a special meeting be immediately called. It is understood that no production whatsoever is to take place until agreed to at the referred to special meeting."

(Exhibit 6334)

Tentative prices for lawn fence were also under consideration at this meeting.

Definite steps toward the resumption of the production of lawn fence were taken toward the end of 1947. In a letter of September 9, 1947 to E. H. Bickle, CANADIAN STEEL, J. Woods, DOSCO, wrote:

"Personally, I cannot see much advantage in offering Lawn Fence this Fall. We cannot do it until we have had another meeting and it seems a meeting is not likely to be held until early October. I would be in favour of deciding at the meeting that Lawn Fence should be put on the list first of January, but if you would rather offer it to the trade earlier, please let me know."

(Exhibit 754)

A letter dated October 24, 1947 from J. Woods, DOSCO, Montreal to the Toronto office of the company, contained the following:

"As you may have suspected, from information given you by Bill McLean [sic], we are likely to be into the Lawn Fence business next year. We have the prices figured for this material but prices have not been settled for Gates.

It was arranged suggested prices would be distributed through Bill McLean's [sic] Office but I would be glad if you will deliver the attached sheet to Jack Lundy and ask him to give consideration to same. You may tell him that I have sent similar sheets to Jim Morris and Alex Page."

(Exhibit 1267)

In a letter of November 12, 1947 to John Woods, DOSCO, A. L. Page, FROST, wrote:

"Following our meeting here a few weeks ago I phoned the Secretary to report on what had taken place, and followed this up by sending a tabulation, on plain paper, of all the prices on which we had agreed.

Have checked your schedule and find it is quite in accordance with the one I sent the Secretary.

I asked that no use be made of this information until in session at our next meeting."

(Exhibit 746)

There was a meeting of the Association in December 1947 when various price matters were discussed. Lawn fence was included among the lines offered to the trade by fence companies in 1948.

Resumption of the production of heavy chain link fencing was considered from time to time at meetings of representatives of the fence companies but no change in the policy of not resuming production is indicated in the evidence until the end of 1947. In a letter of January 9, 1948 to Frank Read, FROST, Montreal, A. L. Page reported that LUNDY had taken an independent position. His letter contained the following comments:

"The question also has arisen as to whether we are free to take on any chain link jobs, so far as our relations are concerned with other fence companies. Lundy made it very plain at the December meeting that he intends to get into chain link fence, but there was no expression from the others about feeling free to take on the occasional job should they individually feel disposed to do so."

(Exhibit 7922)

Production of steel industrial chain link fencing was not actually resumed until 1949, but prior to the resumption of production some companies imported chain link fabric or complete chain link fence from the United States and made sales of such fence. LUNDY made some sales in this way but also pushed ahead with the production of industrial chain link fabric made from aluminum wire, which it had produced to a slight extent in 1947. During this period the fence companies appear to have acted independently in pricing heavy chain link fence of imported materials.

It has already been mentioned that the remaining price controls over woven wire fencing were removed in September, 1947. Meetings of the Association were held toward the end of September and early in October, 1947 to prepare revised price schedules. At the request of F. E. Keating, N. B. FENCE, A. R. Lundy represented N. B. FENCE at the meetings and in a letter of October 1, 1947, reporting on the first series of meetings, Mr. Lundy wrote:

"You will receive a complete report from Mr. Frame after another Meeting which is to be held on Monday, regarding completing price changes, and other details. There are a great number of price changes to be made which, you will understand, take some time. The increase in wire costs is quite substantial, and as a result, let us hope there may be more wire available."

(Exhibit 2916)

As has already been mentioned, a meeting was held subsequently in December, 1947 when further price revisions and other changes in common arrangements were dealt with. These meetings

were the last held while the companies employed the services of S. J. Frame in connection with woven wire fencing, as his services were discontinued before the end of the year.

6. Assistance of S. J. Frame in Joint Arrangements Discontinued

The circumstances leading to the discontinuance of the services of S. J. Frame are not disclosed by the evidence other than the indication that the initiative was taken by DOSCO some time prior to December 11, 1947. It is evident from correspondence about this time that there was no intention to destroy the joint arrangements existing among fence companies. In an inter-office letter of December 19, 1947 to A. L. Page, FROST, Frank Read, FROST, Montreal, mentioned that he had heard of DOSCO's decision from John [Woods]. His letter continued:

"From our conversation I would assume that Dosco could be expected to carry on as in pre-Association days."

(Exhibit 8129)

Writing to Frank Read in a letter dated January 5, [the year is given as 1947 but obviously should be 1948], A. L. Page said:

"Should like to see you head up the organization for your group and endeavor to keep prices in line, and I am asking Tat [Morin] to function in this manner for the Ontario group. With an occasional checking on transactions, violations are less likely."

(Exhibit 7925)

In a letter of December 16, 1947 to F. E. Keating, N. B. FENCE, A. R. Lundy wrote:

"We do not know what has happened to bring about the decision Dosco has made. It is not fully decided what the outcome will be. We may still continue to have an Association of some kind."

(Exhibit 2910)

Mr. R. J. Lundy mentioned the matter again in a letter of April 22, 1948 to Mr. Keating in which he wrote:

"The Fence Association, which has broken up, but we believe meetings are to be held for the general good and welfare - - but would say that since the other companies are not in the Chain Link Fence business as yet, no prices have been developed for Chain Link Fence except those developed by us for our own use."

(Exhibit 9280)

The principal change in the arrangements among the fence companies, brought about by the discontinuance of the services of S. J. Frame, was the abandonment of the system of contract registration for the Chain Link Fence Division which had been set up in 1935 and continued without interruption thereafter. At this time, December, 1947, the installation of square mesh or watchman fence was the main class of business affected because the companies had not yet resumed the sale of industrial or heavy chain link fence. The aspect of contract registration may have been in Mr. Page's mind when he made this comment in Exhibit 7925, quoted above, that "With an occasional checking on transactions, violations are less likely."

Apart from the system of contract registration, arrangements were made to continue the main features of the common understandings among the fence companies within the group itself. Meetings of representatives of fence companies continued to be held from time to time and at some or all of these G. B. Millar, an employee in the Fence Sales Department of STELCO and assistant to J. E. Morris, acted as secretary and generally circulated among the companies price sheets and other memoranda embodying revisions in price schedules made at the meetings.

In connection with the less formal organization now introduced some efforts were made to render less obvious the continuance of arrangements among the fence companies. In his evidence, G. B. Millar said that he had been instructed by a vice-president of STELCO -

". . . that if any conclusions of any gathering of manufacturers were recorded, it was to be done on plain paper; it was not the official function of the Steel Company of Canada."

(Evidence, April 17, 1953, p. 176)

Directions of the following nature also appear in some of the documents which G. B. Millar sent to other manufacturers:

"(IMPORTANT;  
(Transcribe conclusions into your )  
(own terminology and return )  
(original sheets to G. B. Millar )  
(as quickly as possible. )"

(Exhibit 2451)

There is also evidence that in the case of DOSCO and STELCO, at least, it was considered undesirable that the price lists issued to the trade should be dated as of the same time, and information was exchanged in order to ensure that different dates would appear on price lists of the respective companies. The following was included in the evidence of Mr. J. E. Morris (STELCO) in regard to

this practice:

"Q. Why should your list be dated differently?

A. If we considered it should be different, that is quite all right.

Q. What was your reason for thinking it should be?

A. My reason?

Q. Yes.

A. I probably felt it undesirable to make the same announcement the same day.

Q. Why did you think it was undesirable to do that?

A. Why did I think it was undesirable?

Q. Yes.

A. We usually followed the practice of any announcements not being made on the same day. And why is it undesirable?

Q. Yes. And why did you follow that practice?

A. I suggest to you, Mr. Gascoigne, it is very obvious that we did not want to appear to be doing the same thing at the same time. . . ."

(Evidence, April 30, 1953,  
pp. 1073-74)

The evidence discloses two occasions, after 1947, when N. B. FENCE issued price lists without previously receiving information as to price revisions arranged by the companies in Quebec and Ontario and had prices in its lists lower than those established by joint arrangement.

The first occasion occurred after price schedules had been revised at a meeting in August, 1948.

In a letter dated September 17, 1948 to F. E. Keating, N. B. FENCE, A. R. Lundy wrote:

"Enclosed is new price-list dated September 1st. Our printer did not get these out on time, hence the delay in sending you a copy. You may already have received information regarding these prices from the Dominion Steel & Coal Corporation who supply you with wire, but just in case you have not,

we are sending you along a price-list.

This seems to be a good time of year to make a price change as very little fence is being sold, at least in this territory."

(Exhibit 2835)

In a reply to this letter dated September 24, 1948, Mr. Keating said:

"We are in receipt of your letter of the 17th, and we wish to thank you for the price list that you enclosed. We find upon comparing these prices with our list that in many cases your prices are considerable [sic] higher. It is unfortunate that we did not get together before this list was printed, as we only advanced our prices according to the increase of the cost of wire.

Regarding your suggestion, this would be a good time of year to make a change in the price of fencing, we believe that you are right, and we would be willing to conform with the prices that are set up by your goodselves and other manufacturers, as we notice that your list is practically the same as the list we have secured from the Security Fence Co. We would be pleased to have you send us a copy of the proposed change before the end of the year, that we may study it."

(Exhibit 2834)

Replying to Mr. Keating on September 27, 1948, Mr. Lundy wrote:

"Your letter of September 24, received, also copy of your price-list.

The new fence prices were established after consideration was given not only to the additional cost of wire, but the freight increase of 21% which went into effect some months ago. We have also had two wage increases, and by adding the added cost of wire only, the other items mentioned, as well as all other generally increased costs would not be included.

It is not anticipated that there will be any further changes in our list for some time, and although there is some cost involved, we would recommend that you issue another price-list in order that your costs will be covered, plus a margin on the added cost of wire.

There is, as you know, no fence association at the present time, brought about by the wishes of the Steel Company of Canada and the Dominion Steel & Coal Corp. However, these prices as quoted in our price-list have been adopted by them.

Since we have no association, my thought was that you would be advised by your suppliers through John Wood[s]. Evidently this was not done."

(Exhibit 2833)

Mr. Keating wrote in reply on September 29, 1948, indicating that a new price list would be delayed until the beginning of the year:

"We are in receipt of your letter of the 27th, regarding prices. When we issued our price lists, we had no knowledge of what other companies were doing. We did not receive any notice from Mr. Wood[s], and while we knew of the increase in the cost of manufacturing and the freight increase, we did not wise [sic] to go to [sic] far with our prices in one jump. You can readily see whereas having no knowledge of what you were doing, if our prices were advances [sic] unreasonably high, it would place us in a peculiar position. We do not wish to issue a new price list at the present time. It would not look right to the public, but we will issue at the beginning of the year, when we will comply with the general increase.

We were also asked to quote on Railway Fencing. No doubt you have set up a price for the Railways, and we would be very pleased to have this information on fencing, staples and plain wire."

(Exhibit 2832)

The second occasion occurred early in 1951 when N. B. FENCE issued a price list dated February 15, 1951 soon after receiving notice of an increase in the price of wire.

A copy of the price list was sent to LUNDY and in a letter dated March 1, 1951 (Exhibits 2499-2500) R. J. Lundy drew attention to a difference in the basis of the N. B. FENCE price list and stated that the price increase then being made was \$7.00 per ton. F. E. Keating, N. B. FENCE, replied in a letter dated March 8, 1951 in which he said:

"We do not understand part of your letter, in which you state that we have arbitrarily decided that we wanter [sic] a higher price than our competitors. There is some misunderstanding here in your interpretation or ours, as we stated before that we only increased our prices \$6.00 per ton, where you, we understand have increased yours \$7.00 per ton."

(Exhibit 2502)

In a further letter, dated March 13, 1951, R. J. Lundy wrote:

"I forget, but it was quite a number of days after February 10th before the prices were finally developed at the \$7.00 per ton increase. The only excuse we can offer for our carelessness in not contacting you is that we feel since Dosco supply you with wire they should also assume the responsibility for keeping you advised of problems under consideration."

(Exhibit 2503)

The letter then goes on to state that the prices of N. B. FENCE range from 1 1/2¢ to 1 1/2¢ low and to suggest that it might be well if N. B. FENCE could get out a new price list.

In a reply dated March 27, 1951, F. E. Keating wrote:

"We also notice that your company, as well as other Fence companies are increasing to the amount of \$7.00 per ton. This we believe to be correct, and we are now issuing a new list, revising our prices, and they will be sent to the dealers on April 2nd."

(Exhibit 2506)

The methods adopted to establish uniform price schedules in connection with each price change, following the discontinuance of the services of S. J. Frame, were continued in the period after 1947 until 1952. When the production of heavy chain link fencing was resumed generally in 1949 steps were taken to prepare a revised price schedule embracing this line of fencing. Thereafter revisions were made in the price schedule for heavy chain link fencing in much the same way as in the case of other lines of fencing.

The revisions in the price schedules made at meetings of fence manufacturers or arrived at by discussion or correspondence among company officials were incorporated in price lists of the companies subsequently issued. In a few instances one company or another would list a particular class of products at prices higher than those jointly established. Such action, of course, would not prejudice the positions of others or disturb the common understanding among the companies but when, for lack of information or other reason, prices were issued which were lower than those jointly established, attention would be drawn to such lower prices in an endeavour to have them brought into line.

Instances are shown in the documentary evidence when one company would be suspicious that other manufacturers were not maintaining prices or conditions of sale established in the price schedules. An instance of this kind is shown by a letter of October 31, 1949 between FROST officials, which contained the following comments about some tenders:

"In both cases I think our prices contributed to our success.

We shaded our erection charges somewhat, especially in regard to the taking-down price after we have learned indirectly that on other similar jobs our friends were not being governed by any scheduled regulations."

(Exhibit 7858)

On the other hand, instances are also shown by the documentary evidence where one company would check with another to get information about prices quoted or being prepared for quotation on a particular job or where assurances were sought or given that there was no departure from "regular" prices. In an inter-office LUNDY letter of May 9, 1950, details are given of new scales of prices for certain lines and the following comment made:

"When these new prices were established, it was agreed all outstanding quotations on lower prices would be with-drawn by May 13th, which is the end of this week. This fellow may have lower price but I feel reasonably certain he will have a hard time confirming a price lower than that which I have given you."

(Exhibit 2699)

Writing to the Winnipeg office of DOSCO to acknowledge receipt of information about a particular tender for chain link fence, E. H. Bickle, CANADIAN STEEL, said in a letter of October 6, 1950, "I am glad to know at least that the steel company maintained their price on the job, . . ." (Exhibit 8244).

In September, 1950, L. G. Page, FROST, Hamilton, wrote to Frank Read, FROST, Montreal, stating that:

"Several indications of price cutting by someone on tenders to various Government Departments have come to light and I am trying to obtain more information about this situation."

(Exhibit 10054)

The letter went on to ask whether STELCO and DOSCO had secured certain jobs. In a reply dated September 11, 1950, Frank Read wrote:

"With reference to your letter of September 6th, Stelco got neither of the jobs mentioned. Dosco got the B. C. job and at the figures given to Mr. Page."

(Exhibit 10053)

A letter dated February 12, 1951 on plain paper, found in the files of CANADIAN STEEL and addressed to E. H. Bickle, without any company designation, with the signature "Bill" and typed name "W. MacLean", refers to checking of quotations. W. MacLean, at this time was an employee of LUNDY. The first three paragraphs

of the letter read as follows:

"Since our telephone conversation, we have made a complete examination of our quotations and find that only two on 6' F. F. H Fence have gone into the Sudbury district. On each of these two, the prices have been checked and found completely in order, but for your information the details are as follows:

Specification #2 and Specification #3 in steel were quoted. Prices were \$1.66 per foot in Specification #2 and \$1.47 per foot in Specification #3. End Posts were \$19.60 and \$18.00 each respectively and Corner Posts were \$26.50 and \$24.90 respectively.

We have examined all the details in connection with these quotations and are satisfied that everything is in order, but should word to the contrary be received by you, please let us know so we can concentrate on the particular item."

(Exhibit 8476)

Price changes affecting one or more classes of fence products were made in each year after 1947. The circumstances in connection with some of the changes have been indicated to some degree in the preceding references to the evidence. It does not appear necessary to review the oral and documentary evidence bearing upon each change in price which was made on a common basis. It is considered that the extracts which have been cited indicate sufficiently clearly the nature of the means which were employed to secure uniformity in basic price lists and the efforts which were made to have sales made in conformity with the understandings as to a common basis of prices. These understandings continued in general effect until June, 1952 when a meeting was held at Toronto, at which all fence companies, except N. B. FENCE, were represented. At this meeting in June, 1952, the representative of STELCO informed the others that henceforth his company would make a separate market policy for its fencing products and that it was then withdrawing from any sort of understanding, agreement or arrangement regarding marketing or trade practices. Evidence was also given that the representative of DOSCO informed others at the meeting that his company would not participate in any further fence meetings. A review of the evidence relating to the meeting in June, 1952 and to the situation thereafter will be given in a later section.

Reference has been made earlier to the submission by counsel for interested parties that government controls affecting the steel industry and directly or indirectly the woven wire fencing industry were maintained formally or informally throughout all or practically all the period from the outbreak of war in 1939 until 1953. A general description has already been given of the principal control measures or actions shown by the evidence up to the immediate

post-war period. When price control orders were withdrawn from steel wire and woven wire fencing in September, 1947, as previously described, price control was maintained over basic steel products by W. P. T. B. Order No. 757, which included materials for wire up to the stage of rods. It is not indicated by the evidence in the inquiry how long control was maintained in this manner, but Exhibits HE 22 and HE 39, which are letters to STELCO and DOSCO, dated November 16, 1949, from the Minister of Trade and Commerce, inform the companies that price control of steel products will end on November 30, 1949. The letter of the Minister of Trade and Commerce to DOSCO concluded in this way:

"In advising that price of your products will not be controlled after November 30th, the Government expresses the hope that no substantial changes will be made in your price list following decontrol. The health of Canadian industry depends on its ability to obtain Canadian steel at reasonable prices. The Government believes that the performance of the steel industry in the past is a guarantee that no unnecessary price rise will be permitted to take place after decontrol."

The letter to STELCO had the following concluding paragraphs:

"In the circumstances, you will be free to make such adjustments as you consider necessary in the price of your products. I sincerely hope that these adjustments will be kept to a minimum. The future of Canada's manufacturing industries is largely dependent on a steel price that will permit export of the finished product in competition with manufacturers of other countries.

Your performance in the past in holding down Canadian steel prices is the best promise I can think of for future efforts in the same direction."

The programme of military and other defence production which was undertaken after the outbreak of fighting in Korea soon led to the re-establishment of controls over steel supply. The Statement of Evidence gives the following description of some measures:

"On November 29, 1950, P. C. 5799, issued pursuant to the Essential Materials (Defence) Act, declared steel wire to be an essential material, and this was renewed by P. C. 4815, issued under the authority of the Defence Production Act on September 18, 1951. Orders issued under these regulations provided for priorities for steel supplies to be granted to holders of defence contracts and sub-contracts, and prohibited the use of steel in certain types of commercial and amusement building except with government approval. They prevented the use of steel fencing in the construction of such

establishments until January 1, 1953, when the governing order was revoked by order S. D. 3, dated December 15, 1952."

Exhibits HE 23 and HE 40, which are letters dated July 3, 1951 from the Director, Steel Division, Department of Defence Production to STELCO and DOSCO, respectively, are in the same terms and read as follows:

"As you know, Iron and Steel were declared essential materials under the Essential Materials (Defence) Act on November 29th, 1959 [sic] by Order-in-Council P. C. 5799, of which a copy is enclosed.

The policy of the Government is to avoid over-all types of control as much as possible, and it hopes, with the co-operation of industry, to be able to keep controls to the minimum necessary to cope with our international responsibilities and to combat inflation.

In view of the declaration of iron and steel as essential materials and the desirability of avoiding imposition of detailed controls, you are now requested not to make any increases in your selling prices of pig iron or essential iron and steel materials without first discussing such increases and the reasons therefor with this Department.

Your co-operation in this matter will be appreciated."

Exhibit HE 41 is a letter dated November 6, 1952 to DOSCO from the office of the Director, Steel Division, Department of Defence Production granting permission to the company to increase the prices of certain products, including pipe, wire rods and wire.

By letters dated March 20, 1953 to STELCO and DOSCO (Exhibits HE 25 and HE 42 respectively) the Director, Steel Division, Department of Defence Production informed the companies that it would no longer be necessary to consult with the Department before making price changes. The letters which were in the same terms, concluded as follows:

"As we pointed out in our letter of July 3, 1951, the policy of the Government is to avoid over-all types of control as much as possible. The splendid co-operation which you have given us, and the moderate price increases which you requested in the face of rising costs made it possible to avoid all-out controls during the past two years.

We appreciate very much indeed the assistance you gave us during this difficult period."

The evidence in the inquiry does not show any instance after September, 1947 when a government department was consulted before increases in the prices of fencing were made and it was reported to the Commission on behalf of DOSCO that no record of consultation in this period was found in its files.

## CHAPTER IV

### OTHER ASPECTS OF JOINT ARRANGEMENTS

#### 1. Special Classes of Customers

Among the matters which were the subjects of joint arrangement among the fence companies until June, 1952 were the prices or discounts for designated classes of customers. Included among such special classes were certain categories of jobbers or wholesalers, railways and mail order houses. Although not necessarily involving special prices, understandings existed among the fence companies as to the prices for sales to federal and provincial government departments. It was not denied before the Commission that common understandings existed among fence companies in regard to the scale of prices or discounts applicable to sales to classes of customers but it was contended that the understandings did not involve agreement as to the particular customers to whom special prices would be granted. Argument was addressed especially to the matter of lists of jobbers which appear or are referred to in a number of places in the documentary evidence. Some of these may be mentioned in order to indicate the nature of the evidence more specifically.

Exhibit 1816 is a page of a schedule in the form issued by S. J. Frame's office bearing the date October 6th, 1947 and listing a number of firms in the Maritime Provinces under the heading:

"WOVEN WIRE FENCE (FARM FENCE DIVISION)  
Jobbers who are entitled to Jobbers' Discount on  
Farm Fence, Lawn Fence, Poultry Fence, Gates  
and Steel Posts"

Exhibit 1817 is another page apparently from the same schedule, as it has the same date, setting out the terms of sale to provincial governments, certain provincial authorities, municipalities and counties and contractors and property owners.

There was correspondence at some length in 1949 among various officials of STELCO when question arose as to the basis on which sales should be made to Wood Vallance Hardware Company, Limited of Nelson, B.C. In a letter dated March 29, 1949 to J. E. Ducharme, STELCO, Montreal, J. E. Morris, STELCO, Hamilton wrote:

"I note in the second paragraph, Mr. Nickle refers to the invoice covering 742 Medium Fence being priced on the 'C' Jobber basis.

I have been unable to find in our schedule where they are listed as 'C' Jobbers.

Again referring back to your letter of February 3, 1948, you authorize quoting them on Price Schedule F.D.H. 217, which is the Jobber List, and advise that they are to be considered as 'C' Jobbers on Lawn Fence and 'B' Jobbers for Lawn Gates.

I have not been able to locate any authorization from this Department for this listing.

In view of the situation that was created by establishing the Western Canada Hardware on a special listing without consulting other interested parties I would like you to review this and let me know the circumstances.

It might be advisable to destroy this memo."

(Exhibit 4429)

According to the evidence of Mr. J. E. Morris (STELCO) jobbers had been classified as "A", "B" and "C" accounts, with "A" jobbers being the large jobbers who received the largest discount or most advantageous price. "B" jobbers were presumably charged a higher price when purchasing and "C" jobbers were sold at the same price as dealers. Mr. Morris said that the last record he could find of a "B" jobber was in 1947 (Evidence, April 30, 1953, pp. 1100-1105, 1108-10).

In a further letter of April 1, 1949 on the same subject to J. E. Ducharme, Mr. Morris wrote:

"Mr. Nickle's letter of March 22 and your letter to me of March 29, and I might also refer you to the remarks in my confidential letter, which you returned to me, of March 29.

I have outlined to you some conversation I had with Mr. Craig in reference to listing of names to Jobber List without first consulting other interested parties. You mentioned in your letter that Wood Vallance Hardware had been invoiced on the 'C' Jobber basis. I am unable to find any authorization on the Jobber List where they are listed as 'C' Jobbers, but in view of the fact that it has already been priced on that basis I cannot see any other way than that we will have to continue as a 'C' Jobber.

Some time in the future, which I expect may be before the end of June, we will have to discuss the matter and arrive at a revamping of our Western Jobber List, if other people are agreeable."

(Exhibit 4428)

On July 5, 1949, E. T. Wennberg, STELCO, Winnipeg, wrote to J. E. Morris in regard to Wood Vallance Hardware Company, Limited:

"With reference to their application for a better price on Fencing, I believe you expected some decision might be reached in June. Is there anything further to report now?"

(Exhibit 4420)

Replying on July 7, 1949, Mr. Morris wrote:

"As you mention, it was our intention to have some discussion on Jobber Lists for Fencing for the West in June.

However, due to the unsettled condition of the fencing trade, it was decided to postpone our discussions until early in September.

You may rest assured that I will keep you advised and keep in mind the idea you have insofar as the listing of Wood Vallance Hardware is concerned."

(Exhibit 4424)

Exhibits 1652-5, bearing the typed signature G. B. Millar and the note: "Please copy the above conclusions in your own terminology and return the original copy to the writer", are headed:

"FARM FENCE DISCUSSION - SEPT. 9, 1949".

The following are among the items included in the memorandum:

"TERMS

No change to be made in Terms.

Present 'Net 30 Days' Terms to be continued.

SPRING DATING

Usual Terms of Net 30 Days - May 1st, will apply on all materials shipped after June 1, 1950. Spring Terms will not apply against orders shipped prior to January 1st.

Net 30 Days Terms to continue to all Western Jobbers.

Spring Booking will commence on October 1/49 for Eastern and Western Divisions.

## WESTERN JOBBERS

## WESTERN CANADA HARDWARE

to be added to the Western 'A' List.

## WOOD VALLANCE HARDWARE, Limited,

to be added after confirmation from

## NEWFOUNDLAND

Basis of Sale to be - Eastern Jobber and Eastern Dealer  
List with Freight Allowance to North Sydney, N.S. Freight to be  
Prepaid to destination with further charge made on the Invoice for  
Freight from North Sydney to destination.

The following are to be considered Jobbers in the Province of Newfoundland:

Atlas Hardware,	Cornerbrook,
Ayre & Son,	St. John's,
Bowring Bros.,	St. John's,
A. E. Hickman Co.	
Limited,	St. John's and Cornerbrook,
Job Bros.,	St. John's,
Martin Royal Stores,	St. John's,
Neyle Soper Hardware,	St. John's,
Steers Limited,	St. John's and Cornerbrook,
Harris & Hiscock Limited,	St. John's,
Newfoundland Tractor &	
Equipment Company,	St. John's.

The last mentioned name will not be considered a Jobber until confirmation is received from Stelco and Dosco as to the desirability of placing these people on the List.

Newfoundland trade presently being supplied with 10 rod rolls on all styles of Fence. The Manufacturer who is supplying 10 rod rolls is to be approached with the suggestion that standard size rolls be supplied. If trade demands 10 rod rolls, other makers to adopt same as standard for the Province of Newfoundland only.

[In the above list "Atlas Hardware - Cornerbrook" and "and Cornerbrook" after "Steers Limited - St. John's" are handwritten.]

## LAWN FENCE

Jobber Prices and further discounts to same to be laid over until the situation has been studied by individual makers and proposals offered in time for next meeting.

RAILWAY FENCE TO CONTRACTORS

On quotations to Contractors for Railway Fence, The Schedule for Railway Fence, Barb Wire, Gates, Plain Wire, etc., will be applicable with a 15% addition plus Sales Tax.

Shipments to Eastern Canada F.O.B. Mill.

Shipments to Western Canada F.O.B. Hamilton & Montreal.

...

OTTAWA JOBBERS

Consideration to be given at the next Meeting to the adding of:

O'Brien Farm Industries,  
Model [sic] Farm Implements,

to the Jobber List in Ottawa, Ontario."

(Exhibit 1652-5)

Exhibits 1657-9 are similar in form to the above group of exhibits and although there is no typed signature, the following note is included "Please transcribe into your own terminology and return the above conclusions as soon as possible." The memorandum bears the date December 12, 1949 and the heading "FARM FENCE DISCUSSION". Decisions with respect to prices of certain lines and a number of other matters are set out in the memorandum. Among the items recorded are the following:

"2. FARM FENCE STYLES - No Change.

3. FARM GATE SIZES

A small demand for 10' x 48" Gates is being realized in the West, but the demand does not warrant the listing of this size of Gate.

The situation to be reviewed at a later date.

4. JOBBER LISTS

The following Jobbers to be added to Lists:

Newfoundland - Newfoundland Tractor & Equipment,  
St. John's,

Ontario - McCoy Industries, Ottawa,  
Modern Farm Implements, Ottawa,

(Additional Jobbers to be added, if

necessary, to meet Ottawa competition.  
Names will be submitted at a later date)."'

(Exhibit 1657)

Item 9 sets out lawn fence prices to Southern Ontario Jobbers for three quantity classes and then lists a number of firms in Ontario and Quebec under the following headings:- "Quantity Prices to be extended to the following Jobbers":.

Correspondence of N. B. FENCE in 1950 with one of its customers who was given a jobbing discount to assist in making sales to retail stores indicates that the former felt itself bound in some way to restrict the granting of jobber's discounts. The following was contained in a letter of March 8, 1950 to the customer:

"We would request that you do not announce this extra discount that we are giving you to anyone, as we are only supposed to allow a jobbers discount to an established jobber, who has been continually on the road selling our products. Therefore, in order to continue with this, we would request that you keep this information to yourselves."

(Exhibit 9199)

The illustrations from the documentary evidence which have been cited indicate that both the prices or discounts for different classes of customers and the constitution of the classes themselves were matters of discussion and arrangement among the fence manufacturers during the period prior to June, 1952. It is clear that individual members felt themselves obligated to consult with the others before offering more advantageous prices to any customers who had not previously been given a preferred position. It may be admitted that if any member on consulting the others, found that there was not a common view as to the class into which a particular customer should be put, he could insist that he would give the customer a special price regardless of the views of the others. The same situation could have prevailed with respect to other aspects of the common arrangements which existed among the fence manufacturers. It is obvious, however, that if the individual manufacturers had proceeded independently to any significant degree, the common arrangements would have broken down completely. While it is difficult to see the distinction which witnesses attempted to make between arrangements affecting the prices at which sales to various classes of customers were to be made and the selection of customers to whom special terms were to be offered, it may be that the persons attending the fence meetings felt that having a common basis of pricing and being advised in advance of the customers to whom special prices would be granted, a rigid insistence upon general agreement in the selection of such customers was not necessary. It is apparent that efforts were made to secure a general understanding before changes were made in the lists.

## 2. Resale Prices

The arrangement among the fence companies with respect to prices involved the establishment of prices at each level of trade, including the prices for sales to the final purchaser. The retail or resale prices included in the price schedules which formed the basis of common pricing and which were embodied, in the main, in the dealers' price lists of the individual companies, apparently served two purposes. Such uniform resale prices provided a common basis for the sale of the standard fencing lines by individual dealers and they also provided a common basis for the fence manufacturers when making sales direct to the general public. In addition, such resale prices formed a common basis for sales to any customers who were sold direct by fence manufacturers at an agreed discount from the retail list price. For example, N. B. FENCE wrote as follows to STELCO, Montreal on August 31, 1950:

"We have received information that your representative has been quoting prices from the Dealer's list to Contractors in the Maritimes. We received this information from a Jobber who was also quoting on the same inquiry for Fencing.

We have always adhered to the old agreement that Contractors should be quoted the Resale prices less 5%, and the Dominion and Provincial Governments the Dealer's prices, and we believe firmly, that this should be continued

We were very surprised to get this information today, as we were under the impression that you were quoting the same as the rest of us. We would be pleased to receive from you full information as to what you propose to do in the future. We do not think this is asking for information that would do either of us any harm.

Of course, if you intend to quote prices like this in the future, we will be obliged to do likewise, and this is not in the best interests of all concerned. Please give us your understanding of this situation."

(Exhibit 9197)

The documentary evidence does not contain many references to action being taken to secure the observance of resale prices by dealers prior to the enactment of the amendment to the Combines Investigation Act in December, 1951 forbidding the practice of resale price maintenance by an individual manufacturer. The references in the evidence indicate that it was considered by the fence manufacturers that each company should endeavour to see that its dealers observed the resale prices set out in the price lists.

A letter dated May 3, 1949 from LUNDY to FROST contained the following:

"I have now heard from three sources that your dealer A. McRay at Richmond is selling S.842/12 at 82¢ a rod. Words fail me to describe what I think of this kind of activity. It certainly is too bad. I thought your dealer at Richmond had another name but maybe he has sold out to McRay. Any comments you have on this would be appreciated. I can understand C.S. dealers being forced to cut prices with their ring-lock but I cannot understand Frosts dealers being forced into cutting retail prices. I think the fence people should make every effort to try and have dealers maintain retail selling prices."

(Exhibit 7848)

The following is included in a letter in reply dated May 6, 1949:

"Thank you for your letter of May 3rd. This report will be investigated as soon as possible by our salesman on that territory. However, the reported selling price is so far below the recognized retail price that the whole affair appears to be ridiculous. Certainly we do not see why any dealer should cut the price on any style of fence, let alone this particular style which is in such short supply, when all dealers appear to be having no difficulty in obtaining their proper prices. If however, we find that there is any truth to the report, we shall do our utmost to discourage this dealer from cutting prices."

(Exhibit 2754)

In 1950 there was some correspondence between E. H. Bickle, CANADIAN STEEL and T. H. McEvoy, DOSCO in regard to instances reported by the former of dealers selling or offering fencing for sale at less than the listed resale prices. The dealers are referred to as FROST dealers and in a letter of May 6, 1950, E. H. Bickle wrote:

"When I was at the meeting in Hamilton I spoke with Tat Morin about this price cutting and Tat simply said that there was not anything he could do about it and indicated very little interest. This was most unusual because I can recall the time when, if a thing of this kind cropped up, Tat would jump in his car or send a salesman to see the particular dealer who was cutting prices and this dealer would be advised that his agency would be taken away from him if he did not discontinue this practice. Tat, on this occasion, displayed a great lack of interest in the information and I have every reason in the world to

believe that he took no action whatsoever."

(Exhibit 8260)

Writing again to Mr. McEvoy on June 5, 1950, E. H. Bickle said:

"In reply to your letter May 27th I would like you to know that the situation has improved greatly in that area of which I wrote you and where there was a considerable amount of price cutting going on between the dealers.

Our salesman was up that way last week and he reported to me Saturday morning that the trouble seems to have been pretty well corrected so we are hoping of course that it will stay this way and that it will not be necessary to take any further action.

Thanking you for your interest in this matter and assuring you that I believe that the results obtained were due to the action which you took in this matter, . . . "

(Exhibit 8257)

There is no description in the evidence of any action taken by Mr. McEvoy.

### 3. Competition of Metals and Minerals Incorporated

It will be recalled that production of steel chain link fence was not resumed by the fence manufacturers until 1949 but that prior to that time chain link fabric was available from the United States and some importations were made by several fence manufacturers. During this period Loudee Equipment Corporation (now Loudee Steel Corporation) of Montreal became engaged in the chain link fence business through its subsidiary, Metals and Minerals Incorporated. The latter company imported chain link fabric from the United States and, to a lesser extent, from Great Britain.

The entrance of a new firm into the chain link fence business in Montreal became the subject of discussion among the fence manufacturers in Quebec and Ontario, including LUNDY. In a letter to John Lundy on March 16, 1948, C. C. Morin, FROST, wrote in regard to Metals and Minerals Incorporated:

"There will no doubt be some little disruptions here and there from this firm in the Montreal district; but while they can get in some material, I rather think, as you do, that they will have trouble regarding pipe and fittings,

although they may be able to import the complete set-up."

(Exhibit 2878)

The activity of Metals and Minerals Incorporated in the chain link fence field in 1948 appears to have been a contributing factor in the policy of fence manufacturers to import chain link fence materials from the United States before production was resumed in Canada. The following comments on the situation were made in a letter of June 19, 1948 from A. L. Page, FROST to Frank Read:

"I have had two sessions this week with Jim Morris, [STELCO], who has planned on importing a car of fabric per month from Wickwire in Buffalo. He is so curtailed in his tonnage of wire for the manufacture of farm fence and will be getting so little help from us in lawn and tight lock fence that he regards chain link erection as a means of occupying his men as well as boosting sales for his department. Appears to be doing some good work in checkmating the Montreal importer. I think he has been awarded the National Research job at Ottawa.

Had post material been available we would have been in chain link production, taking wire from other accounts. With the recent curtailment of fence manufacture in order that nail production might be stepped up, and, having had no chain link production throughout the first four months of this new period, are not free to put any material in chain link for the next four months.

Others appear to be getting delivery of 3" terminal post pipe, but we have not had a shipment from Page-Hersey since December, but got a little stock from Montreal. This has been the bottleneck but I feel that pipe producers in Canada should make special provision for the needs of fence companies, rather than encourage new opposition to become established with importations, and later, the threat that they might get into production and become permanent and troublesome opposition.

Had given thought to making some importations, but decided to leave the Steel Company and Lundys to fight the battle against the new companies for the present, as we appear to have our hands full with other work."

(Exhibit 7919)

Although discussions appear to have continued among the fence manufacturers on the situation brought about by the entrance of Metals and Minerals Incorporated into the chain link fence business,

the matter of meeting competition from the new firm was dealt with individually by manufacturers who might be interested in a particular job until 1950. In a letter dated August 15, 1949 to Frank Read, FROST, Montreal, C.C. Morin wrote:

"Definitely, something will have to be planned and figured out during this Fall and Winter, and if we decide that a lower price is necessary, at a time when steel is the highest and when wages never were so high, then we will have to go into it with our eyes open and not expect profits. At the same time it would be necessary, by careful planning, as to the kind of material we sell, keeping down the cost of production wherever we can and by having our erection crews work to the best advantage; in other words, we will have to do what was known in the old days as some real frugal housekeeping.

You may have been talking to some of our other friends there, and I wonder what was their reaction to the situation as they have found it, and if they had also been informed that we might have a new competitor in the Farm Fence business."

(Exhibit 10102)

Replying to Mr. Morin in a letter of August 19, 1949 Mr. Read wrote:

"As far as the reaction of our other friends here is concerned, they feel much as we do, while we all have our hands full to take care of the business offering, there does not seem to be much point in meeting cut prices. However, we are all concerned with the adverse effect the lower prices are having as far as some of the bigger buyers are concerned."

(Exhibit 10099)

By the summer of 1950, STELCO, FROST and DOSCO had decided that a special price schedule with lower prices should be established for use in quoting on jobs on the Island of Montreal only. The following description of the situation was given in a STELCO inter-office letter of August 10, 1950.

"Because of Metals and Minerals competition, Chain Link Price Schedules were revised effective May 1st.

On some heights the revision was downward but the main purpose was standardization of prices. Subsequently, it was found Metals and Minerals had quoted under our Schedule on a Montreal Hydro job.

To meet this competition, Mr. Ducharme prepared a special price schedule to be used in quoting jobs on the island. It was my opinion then that we would find it necessary to use same prices on quotations for outside the island if we were to remain competitive with Metals and Minerals. However, to do so will, of necessity, mean a complete revision of our Price Schedule as it would not be practical to have one Schedule for Quebec and a high Schedule for Ontario and the West.

In considering any move to meet Metals and Minerals competition we must keep in mind that presently we are hard pressed for supplies of Pipe and Fabric to meet the present demand at the higher price level.

Mr. Ducharme will personally give you the details of the circumstances effecting the decision in reducing prices for the island."

(Exhibit 5502)

A STELCO inter-office letter of August 14, 1950, written by J. E. Ducharme, gave the following basis for the prices for the Island of Montreal:

"Prices for the Island of Montreal were figured as follows:

Jobs of less than 400 feet	- general price applying to Quebec Province & Ontario
Jobs of 400 to 999 feet	- 5% less than above.
Jobs of 1000 ft. and over	- 5 & 5% less than general price.

The question of further meeting M. & M.'s competition was considered at various times. It does not appear advisable at the present time."

(Exhibit 5500)

Mr. J. Woods (DOSCO) stated in evidence that he had discussed a special price list for the Island of Montreal with Mr. Ducharme of STELCO and Mr. Read of FROST (Evidence, April 21, 1953, p. 500). Mr. J. W. E. Ducharme (STELCO) gave the following evidence:

"Q. During the period that Metals and Minerals was doing chain link erection business did you discuss the competitive situation which arose from that fact with Mr. John Woods?

A. And Mr. Frank Read.

Q. And Mr. Frank Read?

A. Yes.

Q. And did you decide on a common plan for meeting this competition?

A. Yes, sir."

(Evidence, April 23, 1953, p.649)

It is clear from the evidence that a concerted move was made by the fence manufacturers with offices in Montreal to meet the competition of Metals and Minerals Incorporated. As counsel for one of the parties stated in argument "they met that competition in accordance with the agreement that they had. They could not meet the competition otherwise unless they wished to depart from the agreement."

(Evidence, December 7, 1953,  
p. 2230)

The vice-president of Loudee Steel Corporation, Moses Deitcher, gave evidence before the Commission on the fence operations of Metals and Minerals Incorporated. Mr. Deitcher testified that after the first year in business the executives of the company were aware that the fence operations were unprofitable because of lack of adequate supervision and experience in the erection of the fences. It was decided to give up the fence business and Metals and Minerals Incorporated ceased operations in this field in 1951. After 1951, STELCO, FROST and DOSCO did not continue a special price list for the Island of Montreal.



## CHAPTER V

### SITUATION AFTER MEETING OF FENCE MANUFACTURERS IN JUNE, 1952

Reference has been made earlier in this report to the meeting at Toronto, in June, 1952, of representatives of the fence manufacturers, other than N. B. FENCE, when notice was given by STELCO and DOSCO that they were withdrawing from the joint arrangements then existing. It was indicated in evidence given before the Commission that the initiative in the abandonment of the arrangements had been taken by STELCO. Mr. L. T. Craig, vice-president and general sales manager, STELCO, testified that late in 1951 or early in 1952, the management of STELCO sought the advice of outside counsel with respect to the joint arrangements with other fence manufacturers in regard to fencing and that as a result it was decided, on the part of STELCO, to terminate the arrangements forthwith. Part of Mr. Craig's testimony was as follows:

"A. I instructed Mr. Short to terminate any arrangements that we had from that point on. We were going to take independent action.

Q. Mr. Short is whom?

A. General sales manager of our fence division, or the wire and wire products division under which fencing comes.

Q. You gave him instructions that the arrangements in relation to fencing -

A. That is right, told him to carry it down to his assistants.

Q. Now, precisely what were those instructions?

A. That he was to terminate any arrangement that we had been under before, and that from then on we were to take independent action on our own.

Q. Independent action on what?

A. On the matter of prices or anything that might be construed as tending to limit competition.

Q. Did you have any conversations with officials of other companies as to this arrangement which existed in the fencing industry?

A. Yes.

Q. At that time?

A. Yes, I mentioned to Mr. McEvoy, in conversation I had with him one day, that we were going to terminate the arrangement.

Q. Who is Mr. McEvoy?

A. He is the vice-president of Dominion Steel and Coal.

Q. What did you tell him?

A. I told him, because of the advice that we had got from counsel, we were going to move away from any discussions we had previously had.

Q. In your discussion with Mr. McEvoy, was there any suggestion in discussions between you and Mr. McEvoy, as to who should take the lead in establishing prices from that time on?

A. Very definitely not.

(Evidence, December 1, 1953, pp. 1378-80)

"Q. Now, at the time you instructed Mr. Short to terminate this arrangement, did you give Mr. Short any instructions as to what he was to do in connection with the personnel responsible to him?

A. Yes, I told him he was to spell out to them precisely what I had spelled out to him, and they were to have no discussions with any competition on any matters of price, quality, sale or anything to do with style of fence.

Q. Subsequent to the receipt of this letter from Mr. Hilton, [President of STELCO] did you have further conversations with Mr. Short on this subject?

A. Yes.

Q. To what effect were they? Did you give him instructions, further instructions?

A. No other instructions than the ones I gave him originally, that he was to make known to the other business people that we were withdrawing from any arrangement."

(Evidence, December 1, 1953, p. 1381)

Mr. C. P. Short also gave evidence before the Commission and stated that a meeting was held in Toronto in June, 1952, when John Woods, DOSCO, was in that city. In addition to C. P. Short and John Woods, the following persons attended the meeting: Jack Lundy, LUNDY; Mr. Perry, FROST; Mr. Morris, STELCO and Mr. Bickle, CANADIAN STEEL. Mr. Short stated in evidence that he informed the others that STELCO "would no longer be identified with any agreements or understandings or meetings regarding marketing or trade practices associated with the fencing industry" (Evidence, December 2, 1953, P. 1506), and that John Woods, DOSCO, had indicated at the meeting that he saw "no other alternative but for the industry to break up and go their separate ways" (Evidence, December 2, 1953, p. 1507).

Prices of chain link fence and farm fence had been increased by the fence manufacturers in the fall of 1951. Mr. Millar, STELCO, gave evidence in the inquiry that the increases were made after a meeting at which DOSCO, CANADIAN STEEL, LUNDY and STELCO were represented and that after the meeting schedules embodying conclusions reached at the meeting were sent to the companies represented. (Evidence, April 17, 1953, p. 208). The practice of sending the schedules was described by J.E. Morris, STELCO, in his evidence in the inquiry as follows:

"A. . . . It was understood at the meeting that Mr. Millar would prepare the conclusions reached which is embraced in these sheets and would put them on typing or mimeographing or whatever happens and send them out to the different makers. I would have no control over changing them or altering them in any way unless it was a typographical error.

Q. And that procedure was satisfactory to you?

A. That procedure was satisfactory to me because I was at the meeting when this understanding was reached."

(Evidence, April 30, 1953, p. 1096)

The revised price lists for chain link fencing of the manufacturers represented at the meeting bore different dates from September 19 to October 15. The companies dealers' price lists, issued to the trade, also had different dates from October 6 to October 15. It will be recalled that in the evidence of Mr. J. E. Morris (STELCO), cited earlier, it was indicated that announcements of price changes were usually not made on the same day to avoid the appearance of all manufacturers doing the same thing at the same time. N. B. FENCE, a representative of which was not present at the meeting in the fall of 1951, issued a dealers' price list dated October 2, 1951 and subsequently issued a further revised price list dated January 15,

1952. The revisions made in the latter list were generally to provide for higher prices and the list included prices which were higher in some instances than those shown in the price lists of other companies for the southern districts of Ontario and Quebec. Early in 1952, N. B. FENCE was in correspondence with LUNDY in regard to prices to mail order houses. N. B. FENCE requested a list of current prices and dealt with a question about the price it had quoted for a particular type of gate. In a letter dated February 14, 1952, F. E. Keating, N. B. FENCE wrote:

"Regarding the price of Gates, the \$6.50 as quoted by us for the 4 x 48" Farm Gate is an old list, and our price to them for the same Gate is \$7.15 net. Whereas you are quoting on a galvanized Pipe frame, we are quoting on a Black pipe painted. Should we have to use a galvanized frame, our price would be equal to yours. We trust this will clear this matter satisfactorily. If not, please write us again, and we sincerely hope you will [not] have to face any embarrassment [sic].

We wish to thank you for this letter, as we appreciate being informed, and we believe that if this information was passed from one to another, when prices are being made up, we would have no differences."

(Exhibit 9156)

In the case of chain link fencing, LUNDY had introduced a schedule of prices which contained higher prices than those in the general price schedule for chain link fence, which resulted from the discussions among the manufacturers of chain link fence. The schedule of higher prices was referred to by LUNDY as the "non-competitive" schedule, the following description of which was given to the Commission by D. J. DeMille, secretary and assistant-treasurer of the company:

"A. The competitive schedule was a schedule of the prices at which we thought our competitors were selling. The non-competitive schedule was a schedule which we had drawn up for specific cost reasons.

Shortly after the commencement of the Korean war pipe became extremely scarce. Our principal pipe supplier, because of the stringency in pipe supplies, brought in a certain quantity of skelp from Europe on which they paid a premium price, and they brought out a product which they called emergency pipe, the only difference being that it was made from expensive skelp, and the price of this emergency pipe was 25 per cent higher than the price of standard butt weld pipe, and we purchased a quantity of

this emergency pipe and our non-competitive price list was set up to take care of part of the additional costs necessitated by this emergency pipe."

(Evidence, November 30, 1953, p. 1271)

The following comments on the use of LUNDY's non-competitive price list were made in a letter of January 28, 1952 from R. J. Lundy to N. B. FENCE:

"However, on this subject, I would say that we do have a higher Price List on chain link fence and which is, as a matter of fact, presently being revised. As quickly as one is available we will send you one. We use this Price List whenever possible and find a good percentage of our sales are made from this Price List - which is our own. We want you to know we do not feel we are stealing from our customers when we use this Price List in that we feel the prices established in it are fair and proper considered costs. Some of our Agents are making sales from this Price List as well as ourselves and when they send us an order priced from our own Price List we extend to them an extended discount, which splits the difference of the higher price between the selling charge and the Company. In other words, the new Price List is approximately 10% higher than the competitive Price List. The discount for the competitive Price List is 7  $\frac{1}{2}$ %, and the discounts for the non-competitive Price List are 7  $\frac{1}{2}$ % and 5%. If you feel you can use this non-competitive Price List we would appreciate your co-operation, particularly as there is a high freight factor on sales in your area. Of course, it is not possible to use this Price List on Federal enquiries as they are all competitive. If further elucidation is required, please feel we would like to hear from you."

(Exhibits 2733-4)

The changes in prices made following the discussions among fence manufacturers in the fall of 1951 were in effect at the time of the meeting in June, 1952 when announcement was made on behalf of STELCO of its abandonment of the previous arrangements. Between June, 1952 and the time of the inquiry no general change was made in the prices of chain link fencing. General price changes applying to farm fence were made during the winter of 1952-53 and STELCO was the first to issue revised price lists dated November 19, 1952, followed by FROST with price lists dated November 25, 1952. The price lists of the other manufacturers were dated as follows:

LUNDY	- December 2, 1952
DOSCO	- January 2, 1953
CANADIAN STEEL	- January 2, 1953
N. B. FENCE	- January 15, 1953

The conditions under which STELCO increased its prices for farm fence and related lines were described to the Commission by L. T. Craig in the following way:

"Q. Now, in the month of November, 1952, did the Steel Company of Canada attempt to change its prices for farm fencing and related products, and when I state farm fencing and related products, I mean agricultural fence, lawn fence and all types of fence other than industrial chain link fence and square mesh fence?

A. To the best of my knowledge, they did.

Q. The prices were changed?

A. As I recall it, yes.

Q. Did you approve of those prices?

A. Yes, it came about this way. Our labour contract had expired on March 31 of that year, and from April on we had been negotiating with the union and it was sometime in September, as I recall it, the middle or latter part of September we concluded negotiations with the union at some cost to the company, and as a result of that, and in order to conform with the requirements of the steel controller, I applied to Mr. Harris at Ottawa for permission to raise the prices on all products, including wire and wire products.

Q. When you say all products, there was no application made on fencing?

A. Not specifically; wire was considered an essential item under his control order, and we had to support that request with cost, show need rather, and he finally authorized it.

Q. What happened then?

A. Well, following his authorization we related the cost of wire, the increase in wire, to our fence costs and ultimately came up with our new prices on fence products."

(Evidence, December 1, 1953, pp. 1381-3)

Mr. Craig went on to state that the prices were established at this time by STELCO without discussion or agreement with officials of any other fence manufacturer.

The following comments on the price lists issued during the winter of 1952-53 are contained in the Statement of Evidence and no exception was taken to them during argument before the Commission:

"On this occasion STELCO altered its price zones so as to include the Maritime provinces in the Northern instead of Southern territory. Accordingly its prices for the Maritimes were considerably higher than those of DOSCO and N. B. FENCE, which did not make such a change. Oral evidence is to the effect that STELCO later reduced these prices (Evidence pp. 686-687), but new prices were not included by the company in its return of information (Exhibit 'K'). Presumably the change occurred after February 20, 1953.

A significant alteration by STELCO in its price structure was the adoption of quantity prices for lawn fence and chain link fabric sold to dealers. Instead of a single price applicable to all quantities, lower prices were adopted for sales of 5 - 10,000 feet and still lower prices for over 10,000 feet. These innovations were not adopted by LUNDY or N. B. FENCE, but were by DOSCO and CANADIAN STEEL. LUNDY's prices for lawn fence were slightly higher than the STELCO price for the smallest quantity bracket, \* while for chain link fabric LUNDY's prices were the same as STELCO's prices for the smallest quantity bracket. FROST did not apparently adopt the quantity price basis with respect to chain link fabric, but it did for lawn fence. Its net prices for chain link fabric were the same as STELCO's prices in the smallest quantity bracket. With the exceptions noted above the dealers' price lists of the associated companies other than N. B. FENCE for the two price zones contain identical prices. N. B. FENCE did not follow the prices of its competitors closely on this occasion and some of its prices were a little lower than those of DOSCO\*\*."

In regard to prices to mail order houses the Statement of Evidence contains the following comments:

"STELCO adopted the policy of quoting to these customers the same prices as to dealers in the appropriate price zones, whereas DOSCO and CANADIAN STEEL adopted prices considerably lower and not exactly in accordance with the traditional pattern.

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\* LUNDY's practice of quoting lawn fence per foot to the nearest cent or half-cent made most of its prices slightly higher than those of STELCO which quoted per 100 ft. in dollars and cents.

\*\* The differences appear to run from  $\frac{1}{2}$  to  $1\frac{1}{2}$ ¢ per rod in the case of farm fence; some prices being higher and others lower.

LUNDY did not submit its actual prices for customers other than dealers, stating that it had not yet developed internal or external lists for these customers and that the traditional relationships were unchanged."

In addition to the changes in pricing methods referred to in the excerpts quoted above, the following changes were mentioned in argument by counsel for STELCO. The provision in STELCO's price lists for a quantity price for 1,000 rods of farm fence was dropped, leaving prices for a carlot and less than carlot. N. B. FENCE had introduced this basis in its price list in 1949 and the other companies now adopted the same pattern. In the case of jobbers there had been for Western Canada lists of "A" jobbers and "C" jobbers. STELCO now adopted a price list for jobbers, making only one class. This change was adopted by DOSCO and CANADIAN STEEL. STELCO made somewhat the same change for certain other classes of customers where there had been special lists. A general price list was established, as for railways, or a quantity set-up was established, as in the case of other manufacturers purchasing fence posts. The traditional date for spring dating of orders had been May 1, but STELCO now changed this to April 1.

There is evidence as to the policies adopted by LUNDY, DOSCO and CANADIAN STEEL in establishing new prices for farm fencing in the winter of 1952-53. Mr. D. J. DeMille, LUNDY, gave the following explanation in his evidence before the Commission:

"Q. In 1952 is it not true that your price list came out on December 2, 1952?

A. That is right.

Q. After Frost on November 25 and Stelco on November 19. Is there any reason why yours came out on December 2nd?

A. We waited until the other price lists were published.

Q. Why do you wait?

A. Well, I tried to answer that question before.

Q. Well, on this particular occasion there was some particular feature that was in the forefront of your thinking about price lists at that time.

A. Well, we had worked out what we thought the prices should be. We debated for a long time whether or not we would publish our own price list and hang the rest, and we decided that with a cost of around \$250 or \$300 to publish our price list we would be a lot smarter to wait and see

what the others were rather than pour this money down the drain by having to reprint the price list if we found that they were selling at lower prices than we were."

(Evidence, November 30, 1953, p. 1252)

In regard to the action taken by DOSCO, J. Woods gave the following evidence in the inquiry:

"A. These prices of January 2nd? Well, Mr. McEvoy told me to use the prices that our competitors were using.

Q. And did you do that?

A. Yes, sir, that is what was done."

(Evidence, April 21, 1953, p. 468)

"Q. Now I want to take you on again to the further evidence which you gave us this morning with respect to the Dosco price list of January 2, 1953, and recall your evidence as being that Mr. McEvoy told you to follow the Stelco price list of November 16th; is that a correct statement of your evidence?

A. That is right.

Q. Now, did Mr. McEvoy tell you that in the future you were to follow the price lists of Stelco?

A. No, he did not give me any over-all directions like that, but he did tell me at the 1st of January that we should issue a new price list and we should use the Steel Company's prices, which we had.

Q. Now, with respect to the products listed in that price list for sale to the various additional classes of customers you mentioned this morning, such as the railway companies, the mail-order houses, the western A, B and C jobbers — and if there are any others — and you had no Stelco price list to follow, how were you to calculate those prices?

A. Well, there were no prices for mail-order in that list of Stelco's, but that was worked out with Mr. McEvoy as far as we were concerned. We were to follow the dealer list, and, while some of the mail-order houses fell into the category, some did not. We set up a category that a customer who bought a certain quantity, he could have a special price, you see; that is, he could have a price on

a volume, and that came to me on instructions from Mr. McEvoy. That was - I don't think there is anything on the Stelco list for that.

Q. You will remember in your evidence this morning you described certain relationships which existed between the prices on the dealer price lists and the prices to these other classes of customers; you described some relationships which had existed for a long time. Was this the basis on which you calculated your new prices to these classes of customers other than dealers in January 1953?

A. No. We used the prices that the Steel Company had issued for all classes of trade except this mail-order.

Q. Do I understand that the Steel Company had issued a price list for railway companies?

A. That is right.

Q. Have you seen one of these lists?

A. Yes, sir.

Q. Where did you get that list from?

A. I think I asked them for it.

Q. You asked whom?

A. The Steel Company.

Q. You asked the Steel Company for a list?

A. I had been told that they had issued it. I asked them if they had a list, and they gave it to me.

Q. And they gave it to you; when did this take place?

A. That would be about the 1st of January, I would say.

Q. And did you ask the Steel Company for any other lists?

A. I asked them, whatever lists they had, if I was interested in it. They had issued prices, and I asked them if they would tell me what price they were quoting, what price they had issued.

Q. And did you adopt into your own price structure these various lists which you obtained from Stelco?

A. We quoted them, yes."

(Evidence, April 21, 1953, pp. 489-92)

The prices listed by STELCO were adopted so uncritically that an error in STELCO's quantity price in one category for chain link fabric was embodied in DOSCO's schedule. STELCO's list had a price of \$15.35 for one item in quantities 5,000 to 9,999 lineal feet and a price of \$15.95 for quantities over 10,000 feet, whereas the former price should have been \$16.35. The erroneous price of \$15.35 was shown in DOSCO's price list. It may be noted that this error was not made in the printed price list of CANADIAN STEEL, although it has the same date, January 2, 1953. Mr. E. H. Bickle, in his evidence in the inquiry, stated that before preparing price lists for CANADIAN STEEL he discussed the new pattern of pricing adopted by STELCO with John Woods, who agreed with his suggestion that CANADIAN STEEL should follow the same procedure.

It will be recalled that DOSCO followed the new prices and categories established by STELCO with the exception of the prices to mail order houses and the application of northern zone prices to the Maritime Provinces. In the case of mail order houses DOSCO established prices intermediate between those of dealers and jobbers. Mr. McEvoy stated in evidence before the Commission that sometime after DOSCO had established its prices to mail order houses he was requested by a STELCO official to send the company a copy of prices DOSCO had in effect for this class of customer and that he complied with the respect (Evidence, December 2, 1953, p. 1604).

The manufacturers of chain link fencing, namely, STELCO, FROST, DOSCO, CANADIAN STEEL and LUNDY submitted to the Commission confidential returns listing tenders made after June, 1952 by name of customer and overall price quoted. Some additional information as to quantities and value of material and erection charges was given in the returns for DOSCO and CANADIAN STEEL. A comparative statement listing the quotations in chronological order with a code letter for each manufacturer was also submitted to the Commission. The purpose in submitting these returns was to show competitive conditions in the sale of chain link fencing in the period after June, 1952. It will be recalled that a new scale of prices for chain link fencing had been established after discussions among the fence manufacturers at a meeting in September, 1951. The evidence does not show any subsequent general change in chain link fence prices between that time and the opening of the inquiry so that the price lists of the manufacturers adopted in the fall of 1951 were in effect during the period embraced by the returns referred to above. In the case of LUNDY, the company had a non-competitive price list revised on January 2, 1952, of which mention has been made earlier in this report, as well as a price list based on the common basis arranged among the manufacturers.

It is not possible to determine from the information given in the confidential returns to what extent tenders, in those cases when different manufacturers quoted on the same job, were based on the same specifications. In a number of cases tenders of the same approximate date to the same customer by different manufacturers show a wide variation. In a number of other instances the total amounts are very close and in a few instances, less than half a dozen, the totals are identical. It may be mentioned that while the amounts involved in the tenders listed range from a few hundred dollars to many thousands of dollars, a good many would fall in the range \$1,000 to \$7,000. The returns do not permit any opinion to be formed as to whether the variations shown arise from different estimates as to quantities of material and freight costs or from the application of a different basis of pricing to the same specifications. The fact that a number of quotations are close and a few are identical would suggest that a common basis of pricing is still in effect. The returns do tend to show that in the absence of exchange of information and consultation as to prices, variation in tenders would be expected from time to time due to differences in compilation of the data by persons working independently, even though a common basis of prices and charges was being employed.

## CHAPTER VI

### CONCLUSIONS

This inquiry has been concerned with joint arrangements among woven wire fencing manufacturers in effect until June, 1952 and with the situation from that time until the matter was heard by the Commission. In regard to the latter period allegations were made that what amounted to a tacit contract, agreement or arrangement had resulted from the actions of the two principal manufacturers, which would have much the same effects as the system whose abandonment had been announced in June, 1952.

The joint arrangements in regard to steel woven wire fencing in the period prior to June, 1952 have been described in some detail in the earlier chapters of this report. These arrangements were carried out through an association of the Canadian fence manufacturers. At times changes were made in the form of the association and in the means employed in modifying or supervising the arrangements, but up until June, 1952 the essential nature of the understandings among the fence manufacturers continued substantially unchanged. Some of the features of these understandings as they appeared to one of the participants are described in a STELCO memorandum entitled, in part, "Post-War Planning" (Exhibits 4956-63). From this memorandum, dated November 16, 1943, the following paragraphs are taken:

"Farm Fence, Lawn Fence and Protection Fence - prices and operating conditions are decided largely through Associations governing these lines, and in this Association work product standardization has been a continuous study for the last ten years. Considerable progress has been made and will, we hope, be made in the future.

...

Lump sum prices have at time[s] been a factor in the sale of Protection Fencing. Naturally Buyers, particularly the Government Department, have pressed for finished lump sum price. This condition has very largely been avoided by agreement amongst the manufacturers to quote detailed prices of fabric and posts and fittings separately with an estimated but not a committal cost illustrated on the quotation."

The arrangements among the fence manufacturers prior to June, 1952 were directed principally to the elimination of price competition in the sale of woven wire fencing by Canadian manufacturers

producing all but a small part of the woven wire fencing distributed in Canada. To assist in achieving the principal objective, maintenance of uniform prices for each type of sale and for each class of products, discussions or arrangements among fence manufacturers included such matters as styles of fencing, classes of customers, discounts, terms and conditions of sale, variations in which might be construed as a direct or indirect departure from uniform prices.

The evidence shows that arrangements among Canadian fence manufacturers with respect to the establishment of common list prices had their origin in the period prior to 1933. It is of some significance that the first step, shown by the evidence, in establishing a formal organization in connection with the joint arrangements on prices among Canadian fence manufacturers was taken in connection with quotations for chain link fencing. In 1935, a system of registering quotations with a trade association secretary was adopted and this system carried on until the end of 1947. It has been pointed out earlier in this report that sales of chain link fencing are made, to a very considerable extent, on the basis of invitations to tender and sales of this type offer one of the widest opportunities for competitive pricing, in the absence of arrangements which would prevent such competition. The system of registration carried on for such a lengthy period by the fence manufacturers was based upon price schedules which incorporated agreements made with respect to unit prices, terms and conditions of sale, erection charges and other charges in connection with fence construction established in such detail that if the same specifications were followed tenders would be uniform among all firms involved in the arrangements. When he received a copy of a tender the secretary would ascertain if it was in conformity with the schedules and other agreed conditions, and in the case of any variation, he would notify the tenderer of the discrepancy. Uniformity of price was, of course, the design of the system which appears to have operated with substantial success up to the time the joint arrangements were abandoned in June, 1952, even though the registration of quotations was not maintained after 1947.

The arrangements among fence manufacturers with respect to other classes of fence which were not sold to the same extent on the basis of invitation to tender were no less complete from the viewpoint of attempting to ensure that the products of all manufacturers would be sold at uniform prices or, at least, at prices not less than those established in a common price schedule. The engagement of a trade association secretary to assist in the maintenance of a common price schedule for farm fence and related lines did not take place until 1937 and was continued until the end of 1947, but the system of operating with a schedule embracing prices, terms and conditions of sale and other features having a bearing upon the cost to the purchaser of fence had been adopted much earlier and was carried on after the employment of a trade association secretary ceased at the end of 1947.

The maintenance of common prices by manufacturers was facilitated by the fact that the joint arrangements embraced common price zones in Ontario, Quebec and the Maritime Provinces in which goods were sold on a delivered price basis and thus the same price would be quoted by a manufacturer regardless of the location of the factory from which the goods might be shipped. In the case of shipments to Western Canada, the same railway freight rates applied to shipments originating at a number of points in Ontario and Quebec and thus provided a standard basis on which to establish common prices for fence shipped to Western Canada.

The effect of the arrangements in regard to farm fence and chain link fence was to establish and maintain a non-competitive price situation in the sale of fencing by Canadian manufacturers which persisted with very little disturbance throughout the entire period during which the joint arrangements prevailed. So great was the concern of the group of fence manufacturers to eliminate price competition in any form that great pains were taken to standardize fully both the products and all possible aspects of merchandising, including such matters as usually remain competitive even when standard prices prevail in an industry. The manufacturers made every effort to ensure that at no time should any one of them offer merchandise on conditions even slightly different from those adopted by competitors, whether by way of styles, discounts, classes of customers, terms of payment or otherwise. Imports of fencing into Canada have been small. On the few occasions shown in the evidence when imports increased or appeared likely to do so such actual or potential competition became the subject of discussion among Canadian fence manufacturers and on occasion consideration was given to possible action on an agreed basis. On most of the occasions the possibility of continuing disturbance from imports disappeared before the Canadian manufacturers agreed on any action.

The result has been that throughout the period embraced by the evidence up to June, 1952 competition was removed in all practical aspects in the distribution of fencing by Canadian manufacturers. A purchaser of fence from such manufacturers had no alternative but to pay the common price and accept the common conditions established by agreement under the arrangements previously described in this report.

The interference with competition produced by the joint arrangements among fence manufacturers was not short-lived or incidental in character but prevented or lessened in substantial degree competition in the sale of fencing products throughout Canada during a very long period.

The existence of a combination among wire fence manufacturers in the period prior to June, 1952 was not denied by those represented before the Commission although it was argued for N. B. FENCE that its participation had ceased with the abandonment of the formal association arrangements at the end of 1947. It was also not denied

that the combination was designed to have and had the effect of fixing common prices for practically all the woven wire fence distributed in Canada. There was denial that the arrangements actually amounted to agreements in respect of related aspects, such as the inclusion of individuals in certain classes of customers, although it was not denied that prices to respective classes of customers were the subject of agreement.

It was argued before the Commission, as it has been in many previous proceedings under the Combines Investigations Act, that a combination by way of actual or tacit contract, agreement or arrangement having or designed to have the effect of fixing common prices or preventing or lessening competition in the sale or distribution of a commodity over a considerable area of trade should not be considered as operating or being likely to operate to the detriment or against the interest of the public unless it could be demonstrated that the prices so fixed were unreasonable or that the public suffered in some specific manner which could be measured as a result of the prevention or lessening of competition through the operations of the combination. Looked at closely this argument amounts to a contention that even though the operations of a free market in the particular commodity are so interfered with as to eliminate the element of competition in price it should not be held that the public interest had been detrimentally affected or was likely to be so unless it could be shown that the prices fixed by the combination were higher than those which would be set if the industry were subject to some form of public regulation. Placed on this basis the argument is, in effect, a rejection of the competitive principle and an acceptance of the thesis that a system of non-competitive prices administered by a private interested group is more in the public interest than the self-regulating system of a competitive economy. The legislation has never been construed in this fashion by Canadian courts which have consistently held that the legislation reflects a fundamental principle of our economic system, namely, "the protection of the public interest in free competition." In application of this principle it has been held by the courts that an agreement having for its direct object the fixing of a common price among competitors in the sale of a given commodity in any substantial part of the market is, by its very nature, an agreement which is detrimental or is likely to be detrimental to the public. The effect or design of such an agreement is to eliminate one of the essential elements of competition, namely, competition in price and to deprive the public of the benefit and safeguard of competition in the determination of prices.

As competition in price has such an essential role in the effective operation of our economic system, by acting as one of the automatic regulators of developments in production and distribution and by protecting the public from improper prices, it is only in exceptional circumstances that price control should be resorted to as a matter of public policy and then only if it appears inescapable as a means of dealing with a special situation or a national emergency. In normal

circumstances, free competition is the most effective regulator of prices from the public viewpoint of protecting consumers and ensuring an efficiency in production and distribution which will maintain the healthy economy necessary for successful business operations. Price control being an exceptional measure, justified only in cases of an overriding public interest, should not be a power exercised by private groups. Such power should only be exercised by public authority, such as the legislature, the government or an administrative body acting under proper safeguards and legislative direction. When price control is exercised by private groups who are sellers of the commodity being regulated, it is the exercise by one interested group of power to control prices to their own advantage; and, whatever may be their restraint, it is only to be expected, human nature being what it is, that the result will be one-sided action, to the likely detriment of the public.

The ill effects of the removal of price competition by private agreement are given added emphasis in the present case by the fact that certain types of fencing are sold in substantial amounts on invitation for competitive tenders. The essential effect is, of course, no different when the customer shops for his requirements and finds a non-competitive situation, but the system of competitive tenders has been designed so clearly for public protection that attempts by private interests to destroy its advantages bring into sharper focus the effects which are produced by joint arrangements on common prices. There is the fact that in many cases purchases made on invitations for competitive tenders relate to substantial undertakings where opportunities for independent judgment and appraisal of costs and other factors are of a significant nature. To prevent the application of independent pricing through the pre-determination of arbitrary prices and charges by joint arrangement is to make a sham of competitive bidding. The "sharpened pencil" which is used as the expression of competitive pricing has no part to play when competitors make their prices by agreement beforehand.

The submission was made to the Commission that whatever the situation may have been prior to the outbreak of war in 1939, from that time until the end of 1952, and possibly into 1953, except for one brief period preceding the war in Korea, the steel industry in Canada has been subject to formal or informal government control or at least, has been operating under requests for co-operation from the government. Earlier in this report, references are made to various measures of government control applying to the steel industry in the war and post-war periods and to requests for co-operation and acknowledgments of the valuable co-operation given by basic steel producers in connection with the efforts of government to secure orderly adjustments in the economy during times of steel shortages, which embraced the war period and a considerable part of the ensuing period.

The evidence makes clear that the government regarded the level of basic steel prices as an important factor affecting the level of

industrial prices generally and sought by control measures or requests for co-operation to maintain supervision over increases in the prices of basic steel products. This situation applied particularly to DOSCO and STELCO, which are the basic steel producers among the companies manufacturing fence. It would be expected that senior company officials in contact with Ministers of the Crown or senior government officials with respect to policy on prices of basic steel products would have regard to such discussions of policy in dealing with secondary steel products. At the same time it must be noted that apart from the period of the maximum prices regulations when ceiling prices were established generally over all commodities, there is no evidence that the prices of woven wire fencing were subject to government supervision. It is the case that the cost of steel wire forms a very substantial part of the total cost of woven wire fence and that the area within which the fence manufacturer can attempt to affect the cost of the final product may be smaller than in the case of a product where materials form a smaller part of the total cost. Nevertheless, the margin over the cost of wire is significant and as prices increase it tends to become larger in terms of actual dollars and cents. While, in the period prior to June, 1952, when fence manufacturing was not subject to maximum price control, each manufacturer may have felt that the increases decided upon were fully in accord with government requests that price advances should be as moderate as possible, it must be borne in mind that the prices so established by agreement among the manufacturers were intended to be fixed or minimum prices and not maximum prices. There is some evidence that at times, even in this period, sales were made or quotations given at less than the prices agreed upon, but such instances merely serve to show that competition was being affected by the arrangements and that in their absence competition might have come to bear more directly upon the price levels for fencing, with possible advantages to the public.

In a recent case involving an offence under Section 498 of the Criminal Code, whose purpose has been held to be the same as that of Section 2 of the Combines Investigation Act, representations were made to the court which had some points of similarity to the submissions made to the Commission in the present case. The view taken by the court of the effect of the representations is indicated in the following portion of the judgment in *Regina v. Firestone Tire & Rubber Company of Canada, Limited et al (1954) 107 C.C.C. pp. 290-92:*

"On behalf of the accused it was urged that they did no more than was necessary to stabilize the industry after the depression years and after the removal of Government controls following the cessation of hostilities. They stressed the fact that no system of sanctions was employed and that there was not the slightest evidence of laxity or inefficiency on their part; that they produced an ample supply of tires and tubes at a fair price and that it could not be shown that their conduct in any way enhanced the price of these commodities.

It was further emphasized that comparison with other industries made it quite clear that the tire and tube industry enjoyed only moderate profits and lower profits than were earned in many other commercial enterprises. On this point it should be observed, of course, that the exact basis on which these figures were arrived at was not disclosed and if any reliance is to be placed upon them, there should be satisfactory information as to the capital structure of the Company and accurate information as to executive salaries, extraordinary expenses, advertising costs and like matters. In any event, the court should not be asked to speculate on what would have been the price at which these products would have been available if manufactured and sold under conditions of free competition as the public interest requires and which is a right which our law seeks to protect. The fact that during the war the products of this industry, in common with the products of many other industries, were closely controlled is not a mitigating factor. While the rubber industry made a noteworthy contribution to the war effort, the same may be said of countless others. Not long after the war came to a close, however, consideration for the public interest would appear to have been laid aside by them. Undoubtedly they assisted in promoting the manufacture of synthetic rubber during and after the war years but it must not be forgotten that this development was not without considerable benefit to them. It appears that even under the control system which established maximum prices, they endeavoured to maintain a uniform non-competitive schedule of prices as close to the maximum fixed by the control regulations as they could be brought, and made united efforts to secure an elevation of these fixed prices under the existing control regulations. It was stated that the accused had no intention of bringing about an undue lessening of competition or a result which would be harmful to the public. In Container Materials Limited v. The King, (1942) S.C.R. 142, it was argued that it was not sufficient for the Crown to show an agreement or an arrangement, the effect of which would be unduly to prevent or lessen competition, but that the agreement of the accused must be intended by the accused to have that effect. Mr. Justice Kerwin held, however, that this was not the meaning of the enactment on which the count was based. He said:-

'Mens rea is undoubtedly necessary but that requirement was met in these prosecutions when it was shown that the appellants intended to enter and did enter into the very arrangement found to exist.'"

Certain confidential exhibits were submitted to the Commission on behalf of some of the interested parties to show financial results over a period of years or to show financial results of the fence manufacturing operations in those cases in which the companies were engaged principally in other lines of steel production. The bases of the various exhibits or the methods used in compiling the data are not in evidence and it was not argued that they were conclusive from an accounting viewpoint. It was said on behalf of the companies to whose operations they related that the statements demonstrated that only a modest profit, in those cases where a profit was shown, was secured in the manufacture of fencing.

It is the view of the Commission that a test of reasonableness of profits as of reasonableness of prices, even if one could be applied, is not the true test of public detriment in circumstances where there has been the prevention or lessening of competition over a considerable area by agreement on common prices and related aspects of production and marketing. To attempt to measure the effect of the removal of competition by assessing profits when prices are set by agreement would be to exclude the thrust of competition as a spur to efficiency and a potential factor in the determination of costs themselves. The confidential exhibits, as would be expected, show variations between the several companies to which they relate, although they are not prepared in the same manner and thus no direct comparisons are possible, and there is no reason to believe that variations between different companies would not have a competitive influence if prices were established independently. The examples given earlier in this report of the close attention given to very minor differences in tender quotations serve to emphasize this point. The statements also tend to show that the percentage of profit on sales was narrowed during the war period under price control, but has expanded in the post-control period when volume of output has been greater. The two statements which give pre-war data raise some question as to the situation at that time when a higher percentage of profit is shown, although the volume of output in the immediate pre-war period was lower than during wartime and substantially lower than in any year since the end of the war. However, the Commission wishes to make clear that it has not felt called upon to attempt any analysis of the financial information submitted nor to undertake any inquiries into financial matters. The foregoing comments are not intended in any way to be an expression of opinion as to profits which may have been obtained in the manufacture and sale of wire fencing.

In view of the distinction which must be made between the situation existing up to June, 1952 and that which followed the announcement of the abandonment of the joint arrangements, the consideration of the earlier period will be concluded before turning to the more recent developments.

In the period prior to June, 1952 competition among the fence manufacturers had been eliminated by agreement and the

distribution of practically all the fence sold in Canada was conducted under a system of common prices and conditions of sale administered by the interested group of producers. It is evident that this system would not have been carried on for such a lengthy period unless the members of the group believed that by joint arrangement greater benefits would be secured by them than would be obtained under a free market. It is also evident that a prime purpose in the fixing by agreement of prices, terms and conditions was to prevent lower prices or, generally, more advantageous terms and conditions being established by competition. For the reasons which have been given the Commission believes that the joint arrangements among the fence manufacturers operated and were likely to operate to the detriment and against the interest of the public. In our opinion the more active participants in these arrangements were Dominion Steel and Coal Corporation, Limited, Canadian Steel Corporation, Limited, The Steel Company of Canada, Limited, Frost Steel and Wire Company, Limited and Lundy Fence Company Limited, but it is also our opinion on the evidence as a whole, that New Brunswick Wire Fence Company, Limited remained associated with the group until June, 1952. New Brunswick Wire Fence Company, Limited was seldom represented directly at meetings of fence manufacturers and in later years it does not seem to have delegated any person to represent it at meetings. Nevertheless it continued to seek information as to joint arrangements and appears to have been prepared to conform and to have conformed in large measure to such arrangements when given notice of them.

In considering the situation after June, 1952 it is necessary to keep in mind the general background. In the first place, the announcement of the abandonment of the arrangements did not arise because of any outbreak of competitive activity. The decision had been made by senior officers of STELCO and DOSCO, after the former had received legal advice indicating the desirability of such action. The officials of the companies who had been intimately engaged in the joint arrangement had had many years of association which could be expected to have continuing effects even in the absence of further contacts. In the second place, the announcement of the abandonment of the arrangements did not occur in conjunction with any independent pricing action. In fact, the schedules of chain link fencing, prepared in the fall of 1951 and in effect in June, 1952, remained substantially the same up to the time of the inquiry. Changes in the prices of farm and lawn fence were not made until the winter of 1952-53 and it was in connection with the latter that allegations as to the actions of STELCO and DOSCO were made.

The sequence of price changes in the winter of 1952-53, so far as the evidence discloses, commenced with the issuance of new dealer price lists by STELCO under date of November 19, 1952. It was readily admitted by all parties that once price lists are distributed to the trade, copies are easily and quickly obtainable by any other manufacturer from trade sources. It is also in evidence that DOSCO and CANADIAN STEEL acting under the same general sales direction copied

the dealer price lists issued by STELCO in making up their own respective dealer price lists. In one respect DOSCO and CANADIAN STEEL did not follow STELCO in regard to the application of dealer price lists. STELCO had applied Northern zone prices (which were higher than those for the Southern zones) to the Maritime territory, whereas DOSCO and CANADIAN STEEL continued to offer Southern zone prices in this territory. When N. B. FENCE issued its price list dated January 15, 1953 it also contained prices lower than the Northern zone price issued by STELCO. Subsequently, STELCO changed its policy in regard to Maritime territory.

In addition to its dealer price lists, STELCO also prepared new lists for other classes of customers, such as western jobbers, mail order houses, railways, Department of Highways, etc. The information in these lists is normally given directly to the customer concerned and is thus not available to competitors as readily as is information on prices to dealers. At the request of DOSCO, STELCO furnished the former with copies of its special price lists and DOSCO adopted the prices in them for itself and CANADIAN STEEL, except in the case of mail order houses. STELCO had not prepared a separate list for mail order houses, but had placed them on the same basis as dealers. DOSCO prepared a special list for mail order houses with prices intermediate between those of dealers and jobbers and later, on request from STELCO, sent the latter a copy (Evidence, December 2, 1953, p. 1604).

It is evident that exchange of price lists between competitors would not be engaged in with the expectation that such disclosure of information would be used by the recipient to offer a more advantageous price to the customer. It is also evident that to the extent that the exchange of price information results in the adoption of common prices by competitors, the effect is much the same as that which would follow the establishment of common prices by prior discussion. There are industries in which the pricing pattern is described as that of price leadership because the prices of a leading producer are consistently followed in a general way by other producers without agreement among them. It is not contended that such a system of price leadership is being established in the woven wire fence industry and, in fact, the few instances of independent action of large and small manufacturers in the brief period which has elapsed since the abandonment of joint arrangements suggest the contrary. At the same time it is the opinion of the Commission that the exchange of information between STELCO and DOSCO and the adoption in substantial measure of the price information so exchanged will perpetuate or have the tendency to perpetuate, at least in part, the conditions which prevailed under the joint arrangements previously existing. We are of this opinion although there is no indication in the evidence that the price lists in question were also sent to LUNDY and N. B. FENCE. STELCO and DOSCO are the two most important enterprises in the industry and, between themselves and their respective subsidiaries FROST and CANADIAN STEEL (including FROST's subsidiary, Page Fence and Wire Products Limited), they

substantially control distribution and sale of wire fencing and related products throughout Canada. Therefore, any common action by them is highly significant.

The Commission does not necessarily share the view submitted on the part of the Director that the activities of the parties subsequent to the termination of the formal arrangements in June 1952, amounted to a tacit contract, agreement or arrangement having or designed to have the effect of fixing common prices for wire fencing and related products. It wishes however to point out that what took place after June 1952 is in fact illustrative of the fundamentally detrimental nature of the theretofore existing agreements and arrangements and of the inherent danger that their effects will persist. The quasi-automatic adoption of common prices and conditions by the parties, with certain exceptions, upon the 1952-53 price list being exchanged, indicates quite clearly that, because of the long existence and continuous operation of these agreements and arrangements, the acceptance of common prices and conditions by the manufacturers of wire fencing and related products had virtually become a custom of the trade.

If there is to be establishment of competitive conditions in the woven wire fence industry there must be a sharper break with past practices than has occurred so far. The continuation of the exchange of price information and price lists against the background of association extending over such a lengthy period cannot avoid carrying the danger of providing the opportunity, if not the occasion, for tacit, if not actual, arrangements affecting competitive pricing. A measure of protection against this danger would be provided if the parties concerned in the joint arrangements previously existing and their officials and employees were placed under a judicial restraining order, to be executed under the direction of the Court, which would bar such exchange of information or other activities as might lead to a resumption in any way of restrictive arrangements. In considering such a procedure, the appropriate authorities might give attention to the practice of delivered pricing which has been so generally applied in the woven wire fence industry and seek to determine whether, under current conditions, this practice contributes more to the maintenance of common prices in the industry than it does to the most economical distribution of the products of the industry.

(Sgd.) C. R. Smith

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Chairman

(Sgd.) A. S. Whiteley

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Member

(Sgd.) Guy Favreau

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Member

Ottawa,  
November 5, 1954.



APPENDIX

TABLE I

Manufacturers' Sales of Farm Fence in Canada, 1938-1952  
and Tonnage Shipped in 1953

Total Sales	QUANTITY SOLD		INCOME FROM SALES		
	Sales of Associated Companies		Total Sales	Sales of Associated Companies	
	(Tons)	Share of Total (%)		(\\$)	Share of Total (%)
1938	8,404	8,313	98.9	805,528	797,432
1939	8,475	8,377	98.8	769,469	759,739
1940	9,776	9,776	100.0	933,321	933,321
1941	11,722	11,662	99.1	1,144,268	1,138,881
1942	12,342	12,315	99.8	1,160,676	1,156,346
1943	14,033	13,892	99.0	1,314,339	1,298,723
1944	20,620	20,550	99.7	1,885,273	1,878,073
1945	22,839	22,794	99.8	2,092,807	2,087,998
1946	20,277	20,259	99.9	1,992,011	1,990,202
1947	22,675	22,675	100.0	2,542,568	2,541,196
1948	20,238	20,208	99.8	2,648,394	2,645,212
1949	18,398	18,398	100.0	2,641,497	2,641,497
1950	16,041	16,041	100.0	2,428,594	2,428,594
1951	17,036	17,036	100.0	2,830,970	2,830,970
1952	15,917			3,025,638	

Volume Shipped in 1953 - 12,286 tons

Source: Dominion Bureau of Statistics:

The Manufacturing Industries of Canada - 1938 to 1950 incl.

The Wire and Wire Goods Industry in Canada - 1951, 1952.

Monthly Memorandum, Steel Wire and Specified Wire Products.

Returns of associated companies, unpublished.

The names of the associated companies, and the years when they produced farm fence, are as follows:

Dominion Steel and Coal Corporation, Limited:

Sarnia Fence Co. Ltd. - 1938

Security Fence Company Limited - 1938 to 1946 incl.

Canadian Tube & Steel Products, Limited - 1946 on.

Canadian Steel Corporation, Limited - 1938 on.

The Steel Company of Canada, Limited - 1938 on.

Frost Steel & Wire Company, Limited - 1938 on.

Lundy Steel Products Limited - 1938 on.

New Brunswick Wire Fence Company, Limited - 1938 on.

TABLE II

Manufacturers' Sales of Lawn Fence in Canada, 1938-1952  
and Tonnage Shipped in 1953

Total Sales	QUANTITY SOLD		INCOME FROM SALES		
	Sales of Associated Companies		Total Sales	Sales of Associated Companies	
	(Tons)	Share of Total (%)		(\$)	Share of Total (%)
1938	609	609	100.0	83,627	83,627
1939	565	565	100.0	82,680	82,680
1940	466	466	100.0	71,843	71,843
1941	681	681	100.0	97,995	97,995
1942	91	91	100.0	12,752	12,752
1943	-	-	-	-	-
1944	-	-	-	-	-
1945	-	-	-	-	-
1946	-	-	-	-	-
1947	-	-	-	-	-
1948	(1,223)*	1,172	n/a	243,230	
1949	1,470	1,470	100.0	348,125	348,125
1950	1,504	1,492	99.2	348,365	342,765
1951	1,289	1,289	100.0	310,998	310,998
1952	1,307			374,684	

Volume Shipped in 1953 - 1,448 tons

\* Tonnage shipped

n/a - not available

Source: Dominion Bureau of Statistics:

The Manufacturing Industries of Canada - 1938 to 1950 incl.

The Wire and Wire Goods Industry in Canada - 1951, 1952.

Monthly Memorandum, Steel Wire and Specified Wire Products.

Returns of associated companies, unpublished.

The names of the associated companies, and the years when they produced lawn fence, are as follows:

Dominion Steel and Coal Corporation, Limited:

Canadian Steel Corporation, Limited - 1938 to 1941 incl.  
- 1948 on.

Sarnia Fence Co. Ltd. - 1938.

The Steel Company of Canada, Limited - 1938 to 1942 and  
1948 on.

Frost Steel & Wire Company, Limited - 1938 to 1942 and  
1948 on.

Lundy Steel Products Limited - 1938 to 1942 and 1948 on.

New Brunswick Wire Fence Company Limited - 1938 to 1941  
incl. and 1949 on.

TABLE III

Manufacturers' Sales of Chain Link Fence in Canada, 1938-1952  
and Tonnage Shipped in 1953

	QUANTITY SOLD			INCOME FROM SALES		
	Total Sales	Sales of Associated Companies		Total Sales	Sales of Associated Companies	
		(Tons)	Share of Total		(\\$)	Share of Total
1938	1,765	1,765	100.0	251,483	251,483	100.0
1939	2,041	2,041	100.0	272,269	272,269	100.0
1940	2,044	2,044	100.0	303,379	303,379	100.0
1941	2,517	2,516	99.9	346,112	346,012	99.9
1942	1,446	1,443	99.8	207,948	205,555	98.4
1943	394	394	100.0	73,601	73,601	100.0
1944	1,030	1,030	100.0	181,192	181,192	100.0
1945	1,234	1,234	100.0	194,260	194,260	100.0
1946	1,616	1,616	100.0	286,046	286,046	100.0
1947	1,646	1,646	100.0	298,464	298,464	100.0
1948	1,278	1,278	100.0	281,113	281,113	100.0
1949	2,429	2,429	100.0	540,319	540,319	100.0
1950	3,232	3,232	100.0	771,316	771,316	100.0
1951	3,347	3,347	100.0	768,874	768,874	100.0
1952	4,008			1,196,831		

Volume Shipped in 1953 - 3,743 tons

Source: Dominion Bureau of Statistics:

The Manufacturing Industries of Canada - 1938 to 1950 incl.

The Wire and Wire Goods Industry in Canada - 1951, 1952.

Monthly Memorandum, Steel Wire and Specified Wire Products.

Returns of associated companies, unpublished.

The names of the associated companies, and the years when they produced chain link fence, are as follows:

Dominion Steel and Coal Corporation, Limited:

Canadian Tube and Steel Products, Limited - 1946 on.

Canadian Steel Corporation, Limited - 1938 on.

Sarnia Fence Co. Ltd. - 1938.

Security Fence Company Limited - 1938 to 1946.

The Steel Company of Canada, Limited - 1938 on.

Frost Steel & Wire Company, Limited - 1938 on.

Lundy Steel Products Limited - 1938 on.

New Brunswick Wire Fence Company, Limited - 1938 to 1941 incl.

TABLE IV

Manufacturers' Sales of Fence Gates in Canada, 1938-1952

	QUANTITY SOLD			INCOME FROM SALES		
	Total Sales	Sales of Associated Companies	Share of	Total Sales	Sales of Associated Companies	Share of
	No. of Gates	No. of Gates	(%)	(\$)	(\$)	Total (%)
1938	14,956	14,923	99.8	99,982	99,513	99.5
1939	18,285	18,095	99.0	132,452	130,462	98.5
1940	15,843	15,810	99.8	133,280	132,110	99.1
1941	21,279	21,241	99.8	180,014	179,004	99.4
1942	14,387	14,332	99.6	125,169	124,147	99.2
1943	8,711	8,679	99.6	82,112	81,314	99.0
1944	16,740	16,693	99.7	137,900	136,920	99.3
1945	23,980	23,841	99.4	183,773	182,351	99.2
1946	21,878	21,716	99.3	182,802	180,608	98.8
1947	17,230	17,137	99.5	201,385	200,082	99.3
1948	29,520	29,436	99.6	348,248	346,908	99.6
1949	37,802	37,692	99.7	482,466	480,711	99.6
1950	33,945	33,832	99.7	400,593	398,797	99.5
1951	31,138	30,997	99.5	467,469	465,220	99.5
1952	25,867			619,602		

Source: Dominion Bureau of Statistics:

The Manufacturing Industries of Canada - 1938 to 1950 incl.  
 The Wire and Wire Goods Industry in Canada - 1951, 1952.  
 Returns of associated companies, unpublished.

The names of the associated companies, and the years when they produced gates, are as follows:

Dominion Steel and Coal Corporation, Limited:

Canadian Tube & Steel Products, Limited - 1946 on.

Canadian Steel Corporation, Limited - 1938 on.

Sarnia Fence Co. Ltd. - 1938.

Security Fence Company Limited - 1938 to 1946 incl.

The Steel Company of Canada, Limited - 1938 on.

Frost Steel & Wire Company Limited - 1938 on.

Lundy Steel Products Limited - 1938 on.

New Brunswick Wire Fence Company, Limited - 1938 on.

TABLE V

Canadian Exports and Imports of Woven Wire Fencing,  
1938-1953

Year	Exports	Imports
	\$	\$
1938	30,875	104,643
1939	33,874	80,390
1940	84,117	27,831
1941	70,010	24,210
1942	5,670	17,757
1943	935	22,374
1944	4,690	5,842
1945	4,133	53,822
1946	15,218	91,418
1947	5,001	142,104
1948	4,166	262,547
1949	10,568	352,643
1950	14,213	122,598
1951	7,942	182,037
1952	5,040	146,948
1953	10,659	222,818

Source: Dominion Bureau of Statistics, Trade of Canada,  
not including negligible quantity of re-exports.

TABLE VI

IMPORTS OF WIRE FENCING, BY PROVINCES, 1952

<u>Province</u>	<u>Under Tariff</u> <u>Item 402</u>	<u>N.O.P.</u>	<u>Total</u> <u>All Imports</u>
	\$	\$	\$
Newfoundland	2,275	-	2,275
Nova Scotia	-	161	161
Prince Edward Island	-	-	-
New Brunswick	-	-	-
Quebec	583	6,819	7,402
Ontario	14,777	9,987	24,764
Manitoba	130	23,613	23,743
Saskatchewan	-	13,997	13,997
Alberta	597	16,177	16,774
British Columbia	<u>466</u>	<u>57,366</u>	<u>57,832</u>
Total, Canada	<u>18,828</u>	<u>128,120</u>	<u>146,948</u>

Source: Computation by the Dominion Bureau of Statistics.







